Addressing the Challenges of International Bribery and Fair Competition 2002

The Fourth Annual Report Under Section 6 of the International Anti-Bribery and Fair Competition Act of 1998

U.S. Department of Commerce
International Trade Administration
July 2002

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This report can also be found on the Internet at http://www.export.gov/tcc

THE SECRETARY OF COMMERCE
Washington, DC 20230

The Honorable Richard Cheney
President of the Senate
Washington, DC 20510

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. President and Mr. Speaker:

I respectfully present to Congress the fourth annual report mandated by the International Antibribery and Fair Competition Act of 1998 (IAFCA). Section 6 of the IAFCA directs that the Secretary of Commerce submit a report to the Senate and the House of Representatives assessing progress on the implementation of the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Antibribery Convention) and addressing other related matters.

Last year I reported that meaningful progress had been made in the implementation of the OECD Antibribery Convention. I believe that further progress has been achieved.

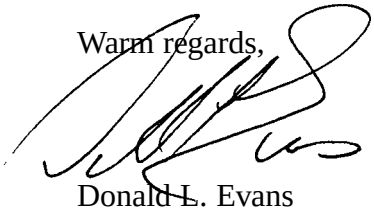
Since last year's report, three additional signatories have adopted national laws to implement the Antibribery Convention. As of June 7, 2002, only Chile and Turkey had not yet done so. Thirty-four of the Convention's thirty-five signatories have ratified it. Only Ireland has not deposited its instrument of ratification. In addition, over the last year, other Parties have taken important steps to correct deficiencies in their legislation, most notably Japan and the United Kingdom. Peer group monitoring of the Antibribery Convention has moved to the second phase, dedicated to ensuring effective enforcement of the Convention's obligations. The enforcement reviews of Finland and the United States have set a high standard for all future reviews of other Parties to the Convention. The United States will continue to insist that this important process be adequately funded and that it is conducted on an expedited basis.

Over the next year we will continue to strongly urge Parties to address all credible allegations of bribery of foreign public officials. We continue to be disturbed by persistent reports of alleged bribery of foreign public officials by firms based in countries where the Antibribery Convention is in force. However, there is evidence that some Parties are actively pursuing allegations of bribery of foreign officials. At the same time we are encouraged that investigations, and potential prosecutions, may be forthcoming by other Parties. Such actions will help deter such corruption so that the Antibribery Convention quickly matures into the effective multilateral anti-corruption instrument it was intended to be.

We recognize that it is also the responsibility of business to participate in the fight against corruption. To this end I have encouraged the private sector to establish comprehensive corporate compliance programs and to demonstrate respect for good corporate governance. Ethical behavior and awareness of the law are essential components of the effective implementation of the OECD Antibribery Convention. I will continue to encourage my counterparts in other Parties to urge their firms to undertake and abide by similar programs.

Congress also requested in the IAFCA that this report address certain advantages available to the international satellite organizations, the International Telecommunications Satellite Organization (INTELSAT), and the International Mobile Satellite Organization (Inmarsat). Since passage of the IAFCA, both Inmarsat and INTELSAT have been privatized and, as a result, there is no intergovernmental participation, including the U.S. Executive Branch, in these private companies. Therefore, reporting on these organizations has been terminated. With the privatization of these organizations we can expect to see an increasingly level playing field for satellite service providers.

Warm regards,



Donald L. Evans

Executive Summary

The Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Antibribery Convention) is the most important vehicle through which the U.S. government has sought to combat transnational corruption. The Convention obligates the Parties to criminalize bribery of foreign public officials in the conduct of international business. It is aimed at proscribing the activities of those who offer, promise, or pay a bribe. For this reason, the Convention is often characterized as a "supply side" agreement, as it seeks to affect the conduct of companies in exporting nations.

This fourth annual report under the International Anti-Bribery and Fair Competition Act of 1998 (IAFCA)[1] examines the continued progress that signatory countries have made in implementing and enforcing the Convention.[2] Most national implementing legislation has been reviewed in prior reports; reviews of New Zealand and Portugal — as well as amendments by other Parties to correct for deficiencies in their respective laws — are included herein. U.S. government assessments of the implementing legislation of the twenty-seven countries reviewed in prior years, as well as more comprehensive background and resource material can be found in last year's report, available at *www.export.gov/tcc*.

This report reiterates the important message that Parties must now enforce their national laws; most now have the legal framework in place to act on all credible allegations of bribery of foreign officials. Parties must now demonstrate the political will to accord priority to the active and effective enforcement of national laws. The U.S. government has brought fourteen enforcement actions over the past year. We will continue to work with other Parties through the ongoing OECD monitoring process and bilateral efforts to promote enforcement of the Convention and its possible further strengthening.

The report also addresses other issues identified in the IAFCA. Among these are steps taken by signatories to implement the OECD recommendation to disallow the tax deductibility of bribes and an assessment of antibribery programs and transparency in several major international organizations. Finally, the report notes that with the privatization of INTELSAT and Inmarsat, there is no intergovernmental participation, including by the U.S. Executive Branch, in these private companies and reporting on these organizations has been terminated.

Major Findings

Meaningful progress continues in the implementation of the Convention.

- As of June 7, 2002, all but two signatories had adopted laws to implement the Convention; Chile and

Turkey must still complete this important task. The legislation of the two countries reviewed in this report, New Zealand and Portugal appear to generally comply with the requirements of the Convention, although we do have some concerns.

- All but one Party (Ireland) had deposited an instrument of ratification with the OECD.
- Some Parties, including major exporters Japan and the United Kingdom, have taken significant steps to correct some of the deficiencies identified by the OECD Bribery Working Group in their implementing legislation.

As reported in our 2001 report, a review of Parties' enforcement mechanisms has begun, and the OECD Working Group on Bribery has completed such reviews for Finland and the United States. These reviews have set a high standard for all of the reviews that follow. We will continue to encourage all participants in the Working Group to adequately fund these reviews and to undertake them on an expedited basis. OECD Ministers recognized the importance of these objectives in their 2002 Communique.

- The U.S. government believes that rigorous enforcement of each Party's respective laws implementing the Convention is needed to maintain the Convention as a credible multilateral anticorruption instrument. As of press time for this report, the U.S. government remains the only Party to have prosecuted cases under the Convention, fourteen in the past year.
- We are encouraged by information coming to our attention that some Parties are pursuing allegations of bribery of foreign officials and that some cases may indeed be brought. Over the next year we will continue to strongly urge Parties to address all credible allegations of bribery of foreign public officials. When information is received relating to acts of bribery that may fall within the jurisdiction of other Parties to the Convention, the information will be forwarded, as appropriate, to national authorities for action.
- We estimate that between May 1, 2001 and April 30, 2002, the competition for 60 contracts worth $35 billion may have been affected by bribery of foreign officials. Of these 60 contracts, U.S. firms are believed to have lost nine contracts worth $6 billion.
- In addition, Parties must all take preventive action when we learn bribes are being solicited in an international tender. We will seek to engage other Parties to take coordinated action when such allegations are received from affected businesses; businesses faced with bribe requests should alert their governments so that action can be taken. As appropriate, we will approach such governments to let them know our companies cannot pay bribes, will not pay bribes, and that such tenders must be decided on the commercial merits of the proposal.
- Only one OECD member country (New Zealand) has reported that it does not yet have any laws to disallow the deduction of bribes, although legislation is currently pending before its parliament. Despite important positive steps taken by the remaining signatories to disallow the deductibility of bribes, this is only a first step, and we remain concerned that the practice of tax deductibility still continues. Careful monitoring is needed to ensure that the rules are actually enforced; the United States will continue to play an active role in that effort.

The U.S. government envisages that a targeted expansion of the Antibribery Convention membership to appropriate states could help to eliminate bribery of foreign public officials in international business transactions. However, the U.S. government believes that countries whose multinational exporting firms are perceived as contributing to the problem of transnational corruption by offering bribes to foreign public officials in international business should be the primary candidates for accession.

The United States has succeeded in keeping issues related to strengthening the Convention on the agenda of the Working Group on Bribery despite a lack of support from many signatories. We will continue to press the OECD Working Group on Bribery to analyze the issue of bribes to political parties and candidates, of particular importance to the United States. These channels of bribery and corruption are covered by the U.S. Foreign Corrupt Practices Act, but not specifically covered by the Convention.

The U.S. government continues to believe that raising public awareness of the laws is another very important element in making the Convention a success. This includes informing the relevant prosecutorial authorities of the new tools they have to prosecute corruption, as well as counseling businesses and the general public about antibribery laws.

- However, based on reports from U.S. embassies and public sources of information, we are discouraged by

the lack of attention being given to this very important implementation issue.

- The United States will continue to encourage other governments to increase public awareness within their countries. We will also continue to urge other governments to promote awareness of the Convention and national laws among their business communities and to encourage their businesses involved in international trade to develop and adopt corporate compliance programs.

INTELSAT and Inmarsat have completed privatization and no longer exist as described in the IAFCA. As a result, neither Inmarsat nor Intelsat Ltd. has enjoyed any advantage by virtue of intergovernmental participation since the date of their respective privatization and reporting on these entities has ceased.

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[1]The Senate, in its July 31, 1998, resolution giving advice and consent to ratification of the Convention, requested that the President submit a similar report on enforcement and monitoring of the Convention to the Senate Committee on Foreign Relations and the Speaker of the House of Representatives. The President delegated responsibility for this report to the Secretary of State. In light of the similarity of the reporting requirements, the Commerce and State Departments have worked together, in close coordination with the Justice and Treasury Departments, the Office of the United States Trade Representative, and the staff of the United States Securities and Exchange Commission, to prepare the two reports.

[2]This report was prepared by the Department of Commerce's International Trade Administration and the Office of General Counsel working in close cooperation with the State Department, the Justice Department, the Treasury Department, the Office of the United States Trade Representative, and the staff of the United States Securities and Exchange Commission.

Contents

Introduction

The promotion of open and free markets around the world has set into motion the positive forces that now drive economic development, democratization, social freedoms, and political stability. These same forces have produced a higher standard of living for many of the world's nations and raised the expectations of many others. These benefits of international trade can prove to be effective antidotes to poverty and its attendant evils. As President Bush has noted, "When trade advances, there's no question that poverty retreats."

The current World Trade Organization (WTO) negotiations are aimed at furthering this market-opening process in the global trading system, and the attendant economic, political and social benefits. In November 2001, trade Ministers from the WTO's 144 member nations established the Doha Development Agenda, setting out the broad objectives for this negotiating exercise. All WTO member countries stand to reap significant economic benefits from the trade liberalization being sought in this negotiating round. An important further aspect of this negotiating agenda is the explicit recognition that trade and economic development advance hand in hand.

While the development dimension of these WTO negotiations represents a key step forward in the evolution of the international trading system, it is increasingly clear that the benefits to be derived from both trade liberalization and economic development can best be realized in environments characterized by good governance and legal frameworks of transparent, democratic, non-discriminatory, and accountable institutions free of corruption. Governments of both developed and developing countries must do their part to create environments conducive to these goals and to support similar efforts of others.

The bribery of public officials has pernicious effects in the countries in which it occurs. It robs those countries of the limited resources that are vital to growth and development. At the same time, it prevents many from escaping poverty. Other evils, including terrorism, can flourish in an environment in which corruption is unchecked.

One of the most important instruments in the fight against corruption is the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Antibribery Convention). The Convention obligates the signatories to criminalize bribery of foreign public officials in the conduct of international business. It proscribes the activities of those who offer, promise, or pay a bribe. For this reason, the Convention is often characterized as a "supply side" agreement, as it seeks to affect the conduct of com-

panies in exporting nations. The Convention entered into force in 1999, and as of June 7, 2002, thirty-three of the Convention's thirty-five signatories[1] now have laws on their books making it a crime to bribe a foreign public official.

While the negotiation of and adoption of domestic legislation implementing the Antibribery Convention is a significant accomplishment in the fight against corruption in international business, Parties to the Convention cannot rest on their laurels. This initial contribution must now be supplemented with demonstrated willingness to ensure that the Convention's provisions are actually carried out. This requires rigorous enforcement of national laws to combat bribery. The OECD is doing its part in this regard. Emphasis within the OECD Working Group that monitors implementation of the Convention is shifting from an analysis of national country legislation to examination of steps Parties are taking to enforce the Convention's disciplines.

Other efforts to promote the objectives of the Antibribery Convention include enlisting the active support of the private sector. Because of the influence of the U.S. Foreign Corrupt Practices Act of 1977, U.S. businesses have already developed corporate compliance codes and ethical guidelines to fight bribery and corruption. In addition, the OECD's Guidelines for Multinational Enterprises were recently expanded to include, inter alia, a major new section on combating bribery of foreign public officials. Awareness by business of these instruments and the incorporation of these objectives in the private sector's approach to doing business are essential components to the Convention's full implementation.

At the same time, other efforts and vehicles must be used to complement the objectives of the Convention. These measures include expecting governments in countries where bribes are solicited to promote good governance and create or enhance transparent and accountable institutions free of corruption. Such programs should contribute to the broader goal of improving national welfare within individual countries; this will benefit their citizens and provide environments conducive to increased trade and investment.

Background

The United States launched a campaign against international corrupt business practices more than twenty-five years ago with the passage of the Foreign Corrupt Practices Act of 1977 (FCPA). The law established substantial penalties for persons making payments to foreign officials, political parties, party officials, and candidates for political office to obtain or retain business. Enactment of the legislation reflected deep concern by the American public about the involvement of U.S. companies in unethical business practices. Disclosures in the mid-1970s indicated that U.S. companies spent millions of dollars to bribe foreign public officials and thereby gain unfair advantages in competing for major commercial contracts.

The FCPA has made a major impact on how U.S. companies conduct international business. However, in the absence of similar legal prohibitions by key trading partners, U.S. businesses were put at a significant disadvantage in international commerce. Their foreign competitors continued to pay bribes without fear of penalties, which resulted in billions of dollars in lost sales to U.S. exporters.

Recognizing that bribery and corruption in foreign commerce could be effectively addressed only through strong international cooperation, the United States undertook a long-term effort to convince the leading industrial nations to join it in passing laws to criminalize the bribery of foreign public officials. The Omnibus Trade and Competitiveness Act of 1988 reaffirmed this goal and called on the U.S. government to negotiate an agreement at the OECD on the prohibition of overseas bribes. After nearly ten years, the effort succeeded. On November 21, 1997, the United States and thirty-three[2] other nations adopted the Antibribery Convention. It was signed on December 17, 1997 and entered into force for twelve of the signatories on February 15, 1999. All signatories to the Convention also agreed to implement the OECD's 1996 recommendation on eliminating the tax deductibility of bribes.

To implement U.S. obligations under the Convention, the U.S. Congress enacted the International Anti-Bribery and Fair Competition Act of 1998 (IAFCA), which amended certain provisions of the Securities Exchange Act of 1934 and the FCPA that relate to the bribery of foreign public officials. The United States ratified the Convention on November 20, 1998, and deposited its instrument of ratification with the OECD on December 8, 1998. The Convention entered into force for the United States on February 15, 1999.

Section 6 of the IAFCA provides that not later than July 1, 1999, and July 1 of each of the five succeeding years, the Secretary of Commerce shall submit to the

House of Representatives and the Senate a report on implementation of the Convention by other signatories and on certain matters relating to international satellite organizations addressed in the IAFCA[3]

The United States has committed significant resources to the task of monitoring implementation of the Convention. The Commerce, State, Justice, and Treasury Departments have worked as a team to monitor implementation and enforcement of the Convention. U.S. agencies have established a comprehensive monitoring process that includes active participation in the OECD meetings on the Convention, bilateral discussions with other governments on implementation and enforcement issues, and careful tracking of bribery-related developments overseas. Preparation of the annual reports to Congress is part of this process of making the Convention a meaningful multilateral, anticorruption instrument.

Conclusion

The individual efforts of all participants should go a long way in promoting honest international trade and investment. However, we are not there yet; a great deal of work needs to be done in curtailing bribery. The U.S. government receives ongoing reports indicating that the bribery of foreign public officials continues to influence the awarding of billions of dollars in contracts around the world. For example, we estimate that between May 1, 2001 and April 30, 2002, the competition for 60 contracts worth $35 billion may have been affected by the bribery of foreign officials. Firms from Convention signatory countries account for about 70 percent of these allegations (*See* Chapter 9).

The U.S. government is steadfast in its commitment to reduce and eliminate the incidence of such bribery. Promoting good governance and rule of law throughout the world, while securing effective implementation and enforcement of the Antibribery Convention, will be instrumental in achieving that goal.

[1]The 30 current member states of the OECD are Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, the Slovak Republic, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. In addition to these countries, Argentina, Brazil, Bulgaria, Chile and Slovenia are signatories to the Convention.

[2]In November 2001, Slovenia became the thirty-fifth signatory to the Convention.

[3]The Senate, in its July 31, 1998, resolution giving advice and consent to ratification of the Convention, requested that the President submit a similar report on enforcement and monitoring of the Convention to the Senate Committee on Foreign Relations and the Speaker of the House of Representatives. The President delegated responsibility for this report to the Secretary of State. In light of the similarity of the reporting requirements, the Commerce and State Departments have worked together, in close coordination with the Justice and Treasury Departments, the Office of the United States Trade Representative, and the staff of the United States Securities and Exchange Commission, to prepare the two reports.

Ratification Status

The Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Antibribery Convention) entered into force on February 15, 1999[1] for twelve of the thirty-four signatories to the Convention. As of June 7, 2002, thirty-three signatories[2] had adopted implementing legislation, and all but one had deposited an instrument of ratification with the OECD Secretariat (*See* Table 1).

Although Chile and Turkey have deposited their respective instruments of ratification with the OECD, each must still adopt domestic laws to implement the Convention. Prompt final action by Chile and Turkey has become much more important now that the OECD Working Group on Bribery has moved to the next phase of monitoring, the Phase II review of each Party's mechanisms for enforcement of its laws implementing the Convention. Continued inaction by these two signatories raises questions about their commitment to the Convention. The Communique issued by OECD Ministers at their Council Meeting in May 2002 includes a call to these signatories to adopt implementing legislation as soon as possible.

Since our 2001 report to Congress, three signatories completed their domestic processes to implement the Convention and deposited instruments of ratification with the OECD: Portugal, New Zealand, and Brazil. The legislation of the first two of these Parties has been reviewed by the OECD Working Group on Bribery and by the U.S. government. The U.S. government assessments of these two countries are included in Chapter 2 of this report. The OECD Working Group on Bribery assessments can be viewed at *http://www.oecd.org/oecd/pages/home/displaygeneral/0,3380,EN-document-31-nodirectorate-no-6-16889-31,00.html* and through a web-link on the Commerce Department Trade Compliance Center website at *http://www.tcc.mac.doc.gov/cgi-bin/doit.cgi?226:54:458690964:17*. The Brazilian legislation was adopted on June 6, 2002 and has not yet been reviewed.

In July 2001, Ireland adopted legislation to implement the Convention, which entered into force domestically on November 26, 2001; however, Ireland must still deposit its instrument of ratification with the OECD Secretariat. The OECD Working Group on Bribery will review Ireland's legislation at its June 12-14, 2002 plenary session; a U.S. government assessment will appear in the 2003 report to Congress.

The following status report on the internal legislative processes, now completed by Brazil, are currently underway for Chile and Turkey to enact implementing legislation. This information is based on data obtained from U.S. embassies and reports from the signatories themselves to the OECD, the latter of which is publicly available at the OECD website referred to earlier in this chapter.

Brazil

The bill to ratify the Convention was approved by the Brazilian parliament on June 12, 2000 and was signed by the President on August 6, 2000. The instrument of ratification was deposited with the OECD Secretariat on August 24, 2000. The Convention text was published in the *Official Gazette* of Brazil on November 30, 2000.

Draft implementing legislation was approved by the President and submitted to Congress on February 20, 2001. The bill was approved by the Federal Chamber of Deputies in October 2001 and was submitted for discussion by the Senate on November 1, 2001. The Senate approved the bill on June 6, 2002. After signature by the President and publication in the *Offical Gazette*, the legislation will enter into force.

Chile

The draft bill to ratify the Convention was approved by the Chamber of Deputies on March 23, 2000. The draft bill was then sent to the Chilean Senate on April 4, 2000 and was approved on March 8, 2001. The instrument of ratification was deposited with the OECD Secretariat on April 18, 2001.[3]

A bill to implement the Convention was submitted to parliament in December 2001, with a request by the Executive in March 2002 that the bill be given urgency status.

Turkey

The bill ratifying the Convention received parliamentary approval on February 1, 2000, and entered into force on February 6, 2000. The instrument of ratification was deposited with the OECD Secretariat on July 26, 2000.

Draft implementing legislation was approved by the Ministry of Justice and the Prime Minister and was submitted to parliament on November 3, 2000. It was approved by the Justice commission in 2001 and must now be scheduled for discussion by parliament.

Efforts to Encourage Implementation and Enforcement

Efforts over the past few years by the United States to encourage signatories to adopt implementing legislation and complete their ratification procedures have generally been successful. Thirty-three of the thirty-five signatories should now be in a position to prosecute cases of bribery under their jurisdiction; we are urging them to do so. The United States shares the concern of other Parties to the Convention that not enough is being done by Chile and Turkey to fully implement the Convention. The United States will continue to encourage these two signatory countries to fully implement the Convention.

Our current monitoring focus has now shifted to Parties' enforcement of their implementing laws. The Secretaries of Commerce, State, and the Treasury, as well as senior officials of these agencies, have used a variety of opportunities to comment on the importance of the Convention and to underscore U.S. concern about implementation problems and enforcement. For example, in 2001 and 2002, Commerce Secretary Donald L. Evans expressed such concerns in letters published in both the *International Herald Tribune* and *The Economist*.

The U.S. government will continue its efforts to secure full implementation of the Convention and will exercise equal vigor in encouraging Parties to the Convention to enforce the laws they have enacted. U.S. agencies will also continue to encourage the U.S. and foreign private sectors to support the Convention through corporate awareness and compliance programs and to further engage nongovernmental organizations to work to eliminate the bribery of foreign public officials in international business.

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[1]Article 15 of the Convention states that the Convention shall enter into force on the sixtieth day following the date upon which five of the ten countries, which have the ten largest shares of OECD exports and which represent by themselves at least 60 percent of the combined total exports of those ten countries, have deposited their instruments of acceptance, approval, or ratification with the OECD Secretariat. For each signatory depositing its instrument after such entry into force, the Convention shall enter into force on the sixtieth day after deposit of its instrument.

[2]On November 5, 2001, Slovenia became the thirty-fifth signatory to the Convention, 60 days after it deposited its instrument of accession with the OECD Secretariat.

[3]Chile and Turkey deposited instruments of ratification with the OECD Secretariat before domestic implementing legislation supporting the Convention was in place and, as of June 7, 2002, remain without legislation specifically implementing the Convention.

Ratification Status of Signatory Countries to the OECD Anti-Bribery Convention (As of June 7, 2002)

Signatory Country	Ratified	Legislation Approved	Instrument of Ratification Deposited With OECD Secretariat[1]	Convention Enters Into Force
Totals: 35	34	33	34	34
Argentina	October 18, 2000	November 1, 1999[4]	February 8, 2001	April 9, 2001
Australia	October 18, 1999	June 17, 1999	October 18, 1999	December 17, 1999
Austria	April 1, 1999	October 1, 1998[2]	May 20, 1999	July 19, 1999
Belgium	June 9, 1999	April 3, 1999[2]	July 27, 1999	September 25, 1999
Brazil	August 6, 2000	June 6, 2002	August 24, 2000	October 23, 2000
Bulgaria	June 3, 1998	January 15, 1999	December 22, 1998	February 15, 1999
Canada	December 17, 1998	December 10, 1998	December 17, 1998	February 15, 1999
Chile	March 8, 2001		April 18, 2001[5]	June 17, 2001[5]
Czech Republic	December 20, 1999	April 29, 1999	January 21, 2000	March 21, 2000
Denmark	March 30, 2000	March 30, 2000	September 5, 2000	November 4, 2000
Finland	October 9, 1998	October 9, 1998	December 10, 1998	February 15, 1999
France	May 25, 1999	June 30, 2000	July 31, 2000	September 29, 2000
Germany	November 10, 1998	September 10, 1998	November 10, 1998	February 15, 1999
Greece	November 5, 1998	November 5, 1998	February 5, 1999	February 15, 1999
Hungary	December 4, 1998	December 22, 1998	December 4, 1998	February 15, 1999
Iceland	August 17, 1998	December 22, 1998	August 17, 1998	February 15, 1999
Ireland		July 9, 2001		
Italy	September 29, 2000	September 29, 2000	December 15, 2000	February 13, 2001
Japan	May 22, 1998	September 18, 1998	October 13, 1998	February 15, 1999
Korea	December 17, 1998	December 17, 1998	January 4, 1999	February 15, 1999
Luxembourg	January 15, 2001	January 15, 2001	March 21, 2001	May 20, 2001
Mexico	April 21, 1999	April 30, 1999	May 27, 1999	July 26, 1999
The Netherlands	December 13, 2000	December 13, 2000	January 12, 2001	March 13, 2001
New Zealand	May 2, 2001	May 2, 2001	June 25, 2001	August 24, 2001
Norway	December 18, 1998	October 27, 1998	December 18, 1998	February 15, 1999
Poland	June 11, 2000	September 9, 2000	September 8, 2000	November 7, 2000
Portugal	March 31, 2000	June 4, 2001	November 23, 2000	January 22, 2001
Slovak Republic	February 11, 1999	September 1, 1999[3]	September 24, 1999	November 23, 1999
Slovenia	December 2000	N/A	September 6, 2001	November 5, 2001
Spain	December 1, 1998	January 11, 2000	January 14, 2000	March 14, 2000
Sweden	May 6, 1999	March 25, 1999	June 8, 1999	August 7, 1999
Switzerland	December 22, 1999	December 22, 1999	May 31, 2000	July 30, 2000
Turkey	February 1, 2000		July 26, 2000[5]	September 24, 2000[5]
United Kingdom	November 25, 1998	1889, 1906, 1916	December 14, 1998	February 15, 1999
		February 14, 2002[4]		
United States	November 20, 1998	November 10, 1998	December 8, 1998	February 15, 1999

1 The Convention entered into force February 15, 1999. The Convention enters into force for all other signatories on the sixtieth day after each signatory deposits an instrument of ratification with the OECD.

2 Date legislation came into effect.

3 Date partial implementing legislation came into effect.

4 The U.K. initially relied exclusively on existing legislation to implement the Convention but adopted the Anti-terrorism, Crime and Security Act of 2002 on February 14, 2002 to address some of the concerns of the OECD Working Group on Bribery. Argentina relied on legislation implementing the Inter-American Convention Against Corruption. (*See* Chapter 2 of 2001 Report to Congress and herein).

5 Deposited instrument of ratification with legislation still being drafted or before parliament.

2

Review of National Implementing Legislation

Introduction

This chapter contains reviews of the implementing legislation for the two signatory countries — Portugal and New Zealand — that completed the process for implementing the Antibribery Convention after the cut-off date for production of the 2001 report. These reviews were prepared following the same procedures and using the same sources as described in last year's report,[1] available at *http://www.tcc.mac.doc.gov/cgi-bin/doit.cgi?204:71:662964052:6*. We expect to include U.S. government assessments for Ireland, Brazil, Chile, and Turkey in our 2003 report. Updated information for three of the Parties that amended their legislation over the last year is also provided below.

The views contained in this chapter are those of the U.S. government agencies and staff that prepared these assessments and not necessarily those of the Organization for the Economic Cooperation and Development (OECD) Working Group on Bribery, the body at the OECD that is reviewing the implementing legislation of the signatories to the Convention as part of the OECD Working Group on Bribery's monitoring process. The Working Group reports on the implementing legislation reviewed to date are made public on the OECD website at *http://www.oecd.org/EN/documents/0,,EN-documents-88-3-no-3-no-88,00.html*, and are linked through the Department of Commerce's website at *www.export.gov/tcc*.

We are continuing to review information on relevant legislation and monitor the signatories' implementation of the Convention independently and within the OECD Working Group on Bribery. Equally important — now that most signatories are Parties to the Convention — is to assess how countries apply and enforce their implementing legislation (*See* Chapter 3). It is in the application by each Party of their laws that the effectiveness of the Convention ultimately will be judged. As a result of the monitoring process, the OECD Working Group on Bribery will be in a better position to recommend to Parties where their respective implementing legislation should be improved and/or where expanding the scope of the Convention might enhance its effectiveness. This ongoing analysis remains a high priority of the U.S. government agencies responsible for monitoring implementation and enforcement of the Convention.

Concerns about Implementing Legislation

Based on information currently available, we remain generally encouraged by the efforts of the other Parties who have implemented the Convention. However, with regard to a number of countries, we still have the same concerns listed in last year's report about how requirements have been addressed and, in some cases, the absence of specific legislative provisions to fulfill obligations under the

Convention. Nonetheless, we are encouraged that several Parties have taken significant steps to correct deficiencies identified by the OECD Working Group on Bribery in their implementing legislation. We expect these Parties to complete the task of remedying deficiencies and for all Parties to take similar steps without further delay as instructed by OECD Ministers in their 2002 Communique. The steps taken by Japan, the Slovak Republic, and the U.K. are:

- *Japan's Implementation:* Japan adopted changes to its Unfair Competition Prevention Law on June 22, 2001, which entered into force on December 25, 2001. We are encouraged that Japan has now amended its implementing legislation to eliminate the "main office exception" and to expand its definition of foreign public official as it relates to public enterprises. However, the latter amendment does not cover all aspects of indirect control by a foreign company, as the change was limited to the examples provided in the Commentaries to the Convention on the subject. In addition, there are a number of other weaknesses in Japan's implementing legislation identified in our prior reports that will require further corrective action.

- *Slovak Republic:* In June 2001, legislation was adopted to extend the foreign bribery offense to third-party beneficiaries and to make its sanctions equal to those imposed for bribery of domestic public officials. The statute of limitations for this offense was extended to five years. This legislation entered into force on August 1, 2001.

- *U.K.'s Implementation:* On December 14, 2001, the U.K. approved amendments to the Corruption Acts under the Anti-Terrorism, Crime and Security Act 2001 (Anti-Terrorism Act). The amendments are located in Part 12 of the Anti-Terrorism Act, sections 108-110. The amended legislation entered into effect on February 14, 2002. Although the recent amendments to the Corruption Acts appear to address the more serious concerns identified in last year's report, i.e., that the Corruption Acts apply to foreign public officials and acts committed by U.K. nationals and corporations outside the U.K., several concerns do not appear to have been addressed. For example, it appears that foreign parliamentarians, judges, officials of international organizations, and persons otherwise performing public functions may still not be covered by the Corruption Acts. It is still unclear to what extent the legislation covers the U.K. territories. Also, the U.K. has not stated whether it still intends to introduce a comprehensive new corruption bill that would provide for a single statute modeled on the recommendations of the Law Commission.

As we continue our analysis of implementing legislation and more information becomes available in the enforcement stage, we will be in a better position to assess the overall conformity of Parties' laws with the Convention. The analysis will be useful for the U.S. government's participation in the OECD Working Group on Bribery and its dialogue with Parties on promoting effective implementation and enforcement of the Convention.

U.S. Implementing Legislation — FCPA

In addition to the 1998 amendments to the Foreign Corrupt Practices Act of 1997 (FCPA), the United States has taken the following actions to implement the Convention:

(1) To conform to the OECD Working Group on Bribery's Phase I recommendation, amendments to the U.S. Sentencing Guidelines have been submitted to Congress to place the FCPA within the same guidelines as the domestic bribery offense. It is expected that this proposal will come into effect, subject to Congress's approval, in November 2002.

(2) Effective August 23, 2000, the Civil Asset Forfeiture Reform Act expanded the grounds for civil and criminal forfeiture, making the proceeds of violations of the FCPA forfeitable.

(3) In March 2002, the President signed an executive order to define the European Union's organizations and Europol as public international organizations, thereby extending the application of the FCPA to bribery of officials from these organizations.

The following summary of foreign legislation should not be relied on as a substitute for a direct review of applicable legislation by persons contemplating business activities relevant to these provisions.

New Zealand

New Zealand signed the Convention on December 17, 1997, deposited its instrument of ratification with the OECD on June 25, 2001, and the Convention entered

into force in New Zealand on August 24, 2001. The New Zealand implementing legislation, entitled The Crimes (Bribery of Foreign Public Officials) Amendment Act 2001 (The Crimes Amendment Act), was passed by the New Zealand Parliament and received the Royal Assent on May 2, 2001. The Crimes Amendment Act was published in Public Act 2001 no28 and entered into force on May 3, 2001. This legislation amended the Crimes Act of 1961 to implement the requirements of the Convention.

New Zealand's dependent, Tokelau, is not covered by New Zealand's ratification of the Convention and therefore must implement the Convention on its own by enacting the proper legislation. Similarly, the Cook Islands and Niue, both of which are self-governing in free association with New Zealand, must also implement the Convention on their own.

Although the New Zealand legislation generally complies with the Convention, there is a dual criminality requirement that in certain cases may be used as a defense and affect certain procedural aspects, such as nationality jurisdiction and the statute of limitations.

Basic Statement of the Offense

The basic statement of the offense is found in Sections 105C, 105D and 105E of the Crimes Amendment Act 2001.

- Section 105C, "Bribery of a foreign public official," provides that a person is guilty of bribery of foreign public official if he or she "corruptly gives or offers or agrees to give a bribe to a person with intent to influence a foreign public official in respect of any act or omission by that official in his or her official capacity (whether or not the act or omission is within the scope of the official's authority) in order to: (a) obtain or retain business; or (b) obtain any improper advantage in the conduct of business." If found guilty, Section 105C(2) states that a person may be subject to imprisonment for up to seven years.

- Section 105C (3) establishes an exception for facilitation payments "for the sole or primary purpose of ensuring or expediting the performance by a foreign public official of a routine government action; and (b) the value of the benefit is small." Section 105 C (1) defines "routine government action" as not including "any decision about (i) whether to award new business; or (ii) whether to continue existing business with any particular person or body; or (iii) the terms of new business or existing business; nor (b) any action that is outside of the scope of the ordinary duties of that official."

- Section 105D,"Bribery Outside New Zealand of a foreign public official," provides that persons described in 105D(2), will be guilty of bribery of a foreign public official in New Zealand even if the bribery act is done outside of New Zealand. If found guilty under 105D, the person will be subject to the same punishment as in 105C(2) i.e., up to seven years imprisonment. Persons described in Section 105D(2) include:

  (a) a New Zealand citizen;

  (b) ordinarily resident in New Zealand; or

  (c) a body corporate incorporated in New Zealand; or

  (d) a corporation sole incorporated in New Zealand.

- Additionally, 105E (1) provides for an exception to both 105C and 105D if the payment "(a) was done outside New Zealand; and (b) was not, at the time of its commission, an offense under the laws of the foreign country in which the principal office of the person, organization or other body for whom the foreign public official is employed or otherwise provides services, is situated." Section 105E (2) provides that if "a person is charged with an offense under section 105C or section 105D, it is to be presumed, unless the person charged puts the matter at issue, that the act was an offense under the laws of the foreign country referred to in subsection (1)(b)." If, however, an offer of money is made from New Zealand by telephone or fax, or money is transmitted from New Zealand to an overseas foreign public official, then the bribery act will be covered by Section 105C(2), irrespective of whether such an act is not an offense under the laws of the official's foreign country.

According to New Zealand authorities, intent is required to commit the basic offense. Although bribery payments to intermediaries and third parties are not expressly covered by the statute, New Zealand authorities state that both are covered.

Jurisdictional Principles

New Zealand exercises both territorial and nationality jurisdiction. Pursuant to Sections 5, 7 and 8 of the Crimes Act of 1961, New Zealand exercises territorial jurisdiction over offenses committed even partially in New Zealand (Section 7) or on any New Zealand, Commonwealth or

Republic of Ireland aircraft or ship that arrives in a New Zealand port or airport (Section 8). If the home country of the person charged in New Zealand pursuant to Section 8 does not have a foreign bribery offense, then he or she may establish a defense pursuant to Section 8.2. The New Zealand courts have broadly interpreted the territoriality provision so an event will be deemed to have occurred in New Zealand if there is a real and substantial link between New Zealand and the offense (e.g., a telephone call, fax or e-mail, initiated in New Zealand to the recipient of the bribe).

According to Section 105D of the Crimes Amendment Act 2001, nationality jurisdiction may be asserted over:

(a) a New Zealand citizen;

(b) a person ordinarily a resident in New Zealand;

(c) a body corporate incorporated in New Zealand; or

(d) a "corporation sole" incorporated in New Zealand.

Nationality jurisdiction may be restricted by Section 105E, if the accused can prove that the acts were lawful in the country of the foreign public official's principal office. Nationality jurisdiction can be asserted over companies incorporated in New Zealand irrespective of the nationality of the natural person who committed the act.

According to New Zealand law, there is no express statute of limitations period for the bribery of a foreign public official. The court may limit the proceedings if it deems that a delay will harm the accused's ability to receive a fair trial. If the statute of limitations expires in the country where the foreign public official's principal office is located, then one would not be able to prosecute the offense in New Zealand.

Coverage of Payor/Offeror

The Crimes Amendment Act 2001, Sections 105C and 105D, covers bribery acts by "every one" and includes both legal and natural persons. Although "every one" is not defined in the Crimes Act 1961, "person" as defined under that act includes "the Crown and any public body or local authority, and any board, society, or company, and any other body of persons, whether incorporated or not, and the inhabitants of the district or any local authority." "Person" is also defined in Section 29 of the Interpretation Act 1999 to include a corporation sole (e.g., where one person has corporate responsibility for a property on behalf of a group of others), a body corporate, and an unincorporated body. In order to attribute the conduct of an employee to a company, the employee must have actual authority in the company, i.e., some real control, over the acts related to the offense.

Coverage of Payee/Offeree

Foreign public official is defined by 105 C(1) as:

(a) a member or officer of the executive, judiciary or legislature of a foreign country;

(b) a person who is employed by a foreign government, foreign public agency, foreign public enterprise or public international organization; and

(c) a person, while acting in the service of or purporting to act in the service of a foreign government, foreign public agency, foreign public enterprise or public international organization. According to New Zealand officials, the definition includes all officials whether appointed or elected.

Penalties

The Crimes Amendment Act 2001 establishes a maximum of seven years imprisonment for a natural person for the offense of bribing a foreign public official. Additionally, pursuant to Sections 26 and 27 of the Criminal Justice Act of 1985, the Court has the discretion to impose a fine upon both a natural person or a legal entity instead of, or in addition to, imprisonment. High Courts in New Zealand have jurisdiction over indictable offenses such as bribery of foreign public officials, and can order fines in any amount. New Zealand authorities state that legal and natural persons are liable for the same fines. A court's fine may reflect the responsibilities of the offender, the severity of the offense, as well as the offender's ability to pay the fine.

In addition to fines, the bribe proceeds and any tainted property may be forfeited or seized pursuant to Sections 8, 15, and 25 of the Proceeds of Crime Act 1991. According to Section 25, a pecuniary penalty will be imposed when forfeiture is unavailable because the offender has converted the proceeds. In order to obtain either the forfeiture or the pecuniary penalty, the Solicitor General must apply to the appropriate court within six months after the conviction.

Books and Records Provisions

Section 194 of the Companies Act of 1993 establishes accounting standards companies must comply with in New Zealand. The Financial Reporting Act 1993 sets out financial reporting requirements for companies and other reporting entities. Sections 10 and 13 of the Financial Reporting Act require that directors certify their financial

statements. Companies must appoint an external auditor to audit their financial statements pursuant to Section 196 of the Companies Act 1993. If the report does not comply with the requirements of the Financial Reporting Act 1993, the auditor must send a copy of the report and financial statement to the Registrar, who will then send them to the Accounting Standards Review Board or the Securities Commission. Penalties, ranging from fines to imprisonment, may be imposed on persons (including directors, shareholders and employees) that fail to comply with New Zealand accounting standards.

Money Laundering

Section 257A of New Zealand's Crimes Act of 1961 includes bribery of domestic and foreign public officials as a predicate offense for the application of the money-laundering legislation. A bribery offense conviction is not required. According to 257A (2), the penalty for engaging in money laundering carries a term of up to seven years imprisonment. Section 257A (3) imposes up to five years imprisonment on someone who possesses property with the intent to engage in money laundering and the knowledge or belief that it is the proceeds of a "serious offence" committed by another person. The Proceeds of Crime Act 1991 defines "serious offence" as an offense punishable by five or more years in prison. For both Sections 257A (2) & (3), it is immaterial whether the offender knew or believed that the property came from a specific serious offense. The actual place where the bribery occurred is irrelevant so long as the act would have been a "serious offence" had it taken place in New Zealand, and was illegal in the place where it occurred.

Additionally, financial institutions are required to report to the Commissioner of Police suspicious transactions that may be relevant to a money-laundering investigation/prosecution. If they fail to report such transactions, then they will be subject to fines ranging up to $20,000 New Zealand dollars for natural persons and $100,000 New Zealand dollars for legal entities.

Extradition/Mutual Legal Assistance

Extradition is generally governed by the Extradition Act of 1999, which categorizes three different types of countries:

(1) Australia and "designated countries";

(2) Other Commonwealth countries and "Order in Council" countries which are not "designated countries; and

(3) All other parties.

For extradition, dual criminality is required and is considered to exist if the conduct is punishable under both New Zealand law and the requesting country's law by a penalty of imprisonment of not less than 12 months. According to New Zealand authorities, the foreign bribery offense is deemed to be included in the list of extraditable offenses in extradition treaties between New Zealand and Parties to the Convention, and the provisions of the Extradition Act must be interpreted to give effect to the Convention.

New Zealand may provide mutual legal assistance to foreign states through the Mutual Assistance in Criminal Matters Act 1992, treaties (bilateral MLA treaties have been concluded with Hong Kong and Korea), as well as arrangements with other countries. The Mutual Assistance Criminal Matters Act allows New Zealand to provide mutual legal assistance to three categories of countries:

(1) "prescribed countries" (including Australia, USA, UK and Korea);

(2) convention countries; and

(3) other countries in response to ad hoc requests.

According to New Zealand officials, countries that have ratified the OECD Convention fall under the second category. Bank secrecy cannot be invoked to refuse mutual legal assistance.

Complicity, Attempt, Conspiracy

New Zealand's Crimes Act of 1961 Section 66 (1) (b)-(d) covers the offense of complicity and provides criminal liability for "a party" to an offense. Anyone who takes part, helps, or encourages the commission of the criminal act will be punished by the same penalty as the perpetrator (up to seven years imprisonment for bribery of a foreign public official under sections 105C and 105D).

Sections 72 and 311 (1) define and criminalize attempt. Aside from offenses, the penalty for which is life imprisonment, attempt may be penalized by no more than half the maximum punishment of the offense, which in the case of bribery of a foreign public official is three and a half years. According to Section 311(2), a person or corporate body may still be held liable for attempt even if the act is not committed. Attempt includes offers that are not accepted, as well as offers that the official is unaware of, if the offeree has taken "real and practical steps" to communicate the offer.

Conspiracy is defined by Section 310. A conspirator may be liable for the same penalty as the perpetrator of the basic offense. Therefore, a conspirator who bribes a

foreign public official may be liable for up to seven years imprisonment. According to New Zealand authorities, for the offense of conspiracy there must be an agreement and the intent to take steps to further the purpose of the agreement, although affirmative actions in furtherance of the agreement are not required.

Portugal

Portugal signed the Convention on December 17, 1997 and deposited its instrument of ratification with the OECD Secretariat on November 23, 2000. It enacted implementing legislation, Law no. 13/2001, on June 4, 2001, which entered into force on June 9, 2001. Under the Portuguese Constitution, the Convention automatically becomes law upon ratification or adoption and subsequent publication.

The Portuguese legislation generally appears to satisfy the main obligations of the Convention, although there are concerns that it may not cover bribery acts in relation to all foreign legislators, as required under Convention Article 1.4(a).

Basic Statement of the Offense

Law no. 13/2001 of June 4 added the basic statement of the offense, new article 41-A on "Active Corruption Against International Business," to pre-existing Decree Law no. 28/84 of January 20 (Decree Law):

> Whoever either directly or through an intermediary with the consent or ratification of the former, gives or promises to give to a national or foreign public or political official or with their knowledge to a third party any undue pecuniary or intangible advantage, in order to obtain or retain business, a contract or other improper advantage in the conduct of international business, shall be punished with a prison sentence of one up to eight years.

The text of article 41-A(1) covers giving and promising any undue pecuniary or intangible advantage. Although it does not explicitly mention "offering," according to Portuguese authorities offers are covered under the Portuguese translation of the word "gives," and this is illustrated in Portuguese jurisprudence. Even if the law of the foreign state permits the advantage (bribe payment, etc.), if the advantage were "undue," then Article 41-A would still apply. Similarly, although intent is not specifically mentioned, the Portuguese authorities explained that the offense requires intent.

Jurisdictional Principles

Portuguese law provides for both territorial (Criminal Code Article 4) and nationality (Article 3, Law no. 13/2001) jurisdiction. Both grounds of jurisdiction also apply to legal persons.

Article 4 of the Criminal Code provides that Portuguese law applies within the Portuguese territory, regardless of nationality of the actor, on Portuguese ships or aircraft. Acts committed in whole or in part or having results in Portugal are considered to fall within Portuguese territory and therefore within its jurisdiction, regardless of the nationality of the actor (Criminal Code Article 7). Portugal confirms that telephone calls, faxes, and e-mails from Portugal fall within its jurisdiction.

Under the new implementing legislation, Portugal will assert nationality jurisdiction over its citizens — as well as over foreigners found in Portugal — regardless of where the foreign bribery acts were committed (Article 3 of Law no. 13/2001). For a legal person to be "found in Portugal," the legal person must have some kind of a link to Portugal, such as being incorporated under Portuguese law or having a branch office in Portugal.

Coverage of Payor/Offeror

Article 41-A covers "whoever," which includes natural persons, and also covers legal persons pursuant to Article 3 of the Decree Law no. 28/84. According to the Portuguese authorities, Article 3 encompasses all legal persons, companies, and de facto associations, including corporations and unincorporated associations, irrespective of legal personality. Portuguese authorities also confirm that state-owned or state-controlled entities could be liable for bribery acts under the basic offense.

Article 3 provides that legal persons are liable for acts committed by their governing bodies or representatives "on behalf" of the legal person and "in its collective interest." Portuguese authorities confirmed that bribery acts by any employee irrespective of his or her position in the company can trigger corporate liability. Article 3 provides that legal persons are not liable if the offender acted against the express orders/instructions of the legal person's authorized management. Whether a legal person is liable does not affect the individual liability of a natural person, although a legal person could pay a natural person's fines (*See* discussion in "Penalties" below). A natural person must be identified as having committed the offense in order for the legal person to be liable, although a conviction of the natural person is not required. The terms "on behalf" of a legal person and "in the collective interest" include acts that only partially benefit the legal entity, and may also include

acts for the benefit of the legal person's foreign subsidiary or foreign division.

A legal entity can claim a "defense" pursuant to Article 3.2 where the offender acted against explicit orders from authorized persons, but not if the company's statutes or regulations expressly prohibit bribery or illegal acts, the authorized person failed to supervise, or the authorized person forbid bribery acts generally but allowed the specific bribery act to occur.

Coverage of Payee/Offeree

The basic statement of the offense covers bribery acts made to either foreign public officials (Article 41-A(2)) or foreign political officials (Article 41-A(3)). The definition of "foreign public official," contained in the basic statement of the offense is "any person exercising a public function for a foreign country, whether that person holds a public office, in particular, an administrative or judicial office, whether appointed or elected, or exercises a function for an enterprise, a public organization or a public services agency, from the national to local level, as well as any official or agent of a public international or supranational organization." Although the definition of foreign public official is autonomous and similar to that of the Convention, it does not expressly cover foreign public officials holding legislative positions. According to Portuguese authorities, judges will look to the Convention and Commentaries for guidance in interpreting these terms.

The basic statement of the offense also covers bribe payments to foreign political officials, although the definition for such officials will be determined by the laws of the foreign State. According to Portuguese authorities, legislators would be covered either under "foreign public officials" if they are appointed or elected, or under "political officials" as defined in the foreign public official's country. This issue could be problematic in situations where the foreign legislator was not appointed or elected and the definition of "political officials" under the foreign state law does not include all legislators. On the other hand, bribery acts to foreign political party officials could be covered under the Portuguese legislation, in which case the Portuguese legislation goes beyond the requirements of the Convention.

Penalties

Article 41-A prohibits the bribery of both foreign and domestic public officials, and the penalties for both types of bribery acts under its provisions are identical. The penalty for natural persons is one-to-eight years imprisonment. Article 6 of the Decree Law contains "sentencing guidelines," whereby the penalty may be increased if the offender obtained "excessive profits"; the goods or services involved in the crime consisted of a large portion of the legal entity's gross profits for the prior year; or, the offender's acts favored "foreign interests" over the "national economy." Courts may not impose a fine in lieu of imprisonment where the circumstances described in Article 6 apply. A combined punishment consisting of fines and imprisonment is not available. The fines are calculated using a "day-fine" and may range from 2,000-36,000,000 Portuguese Escudos (PTE) (approx. U.S. $9.00 to $159,000).

For legal persons, Article 7.1 of the Decree Law provides either for "reprimand," a fine, or dissolution. Fines are calculated using a "day-fine" and could range from PTE 365,000-2,920,000,000 (approx. U.S. $1,600-$12,904,500) depending on the circumstances of the offense. Dissolution is only ordered where the company's founders or management are using the company for the purpose of committing the offense.

There are also "criminal accessory" penalties provided for in Article 8 of the Decree Law, such as confiscation, temporary prohibition from activities and professions, disqualification from public tenders and for subsidies, full or partial closure of the legal entity, and publication of the conviction. Legal persons and natural persons are jointly and severally liable for fines imposed on natural persons. Therefore, the legal person may be allowed to pay the offender's fine.

Confiscation is available for bribery acts of a foreign public official upon conviction under Criminal Code Articles 109-111 and Article 9 of Decree Law no. 28/84. Portuguese officials stated that these provisions provide for confiscation of bribes and bribe proceeds. Where confiscation is unavailable, Article 111.4 provides that confiscation will be replaced by a payment to the State of comparable value. Seizure of bribe payments and proceeds is available under Articles 46 and 49 of Decree Law no. 28/84 and Article 178 of the Code of Criminal Procedure.

The statute of limitations for bribery of foreign public officials is 10 years (Criminal Code Article 118). This period begins to run from the date the "act" was "accomplished" (Criminal Code Article 119).

Books and Records Provisions

Portuguese accounting standards are contained in the Official Plan of Accounts, Decree Law No. 410/89, which applies to companies generally falling within the Companies Act or under the Commercial Code, individual limited-liability establishments, public companies, co-operatives, and other entities. Banks, insurance

companies, and other financial entities are subject to what are called "specific plans of accounts." Also, Article 29 of the Commercial Code 1888 sets forth obligations for businesses and corporations ("traders") on the maintenance of books and records provisions. Auditors are governed by the Decree Law no. 487/99 of November 16, which requires that corporate accounts be audited by independent professional auditors.

Money Laundering

Money-laundering provisions are contained in the Decree Law no. 325/95 of December 2. Portuguese law provides that bribery of both domestic and foreign officials is a predicate offense for the application of its money-laundering legislation, irrespective of whether the underlying offense of bribery took place in Portugal or abroad, see Article 374 of the Criminal Code and Article 2 of the Law No. 13/2001, respectively. Prior convictions for predicate offenses are not required. Financial institutions are required to report suspected money-laundering transactions pursuant to Article 10 Decree Law no. 313/93 of September 15 and Article 3 of the Decree Law no. 325/95.

Extradition/Mutual Legal Assistance

Portugal will honor extradition requests pursuant to treaties, or under Law no. 144/99. The Convention will also serve as a legal basis for extradition for the offense of bribery of foreign public officials. Article 31.2 of Law no. 144/99 provides that for extradition there must be a maximum term of imprisonment of at least one year in Portugal and the law of the requesting State. Generally, reciprocity is required. Although Portugal generally will not extradite its own nationals, it may initiate criminal proceedings against them pursuant to Article 32 of Law no. 144/99.

Portugal provides mutual legal assistance in criminal matters pursuant to treaties. Where there is no applicable treaty, mutual legal assistance in criminal matters may be provided under Law no. 144/99 of August 31. Generally, reciprocity is required. Pursuant to Article 147 of the Law no. 144/99 of August 31, Portuguese mutual legal assistance generally does not require dual criminality unless coercive measures are required. Portugal stated that the requirement for dual criminality will be deemed fulfilled when assistance is requested concerning an offense covered by the Convention. According to Portuguese authorities, mutual legal assistance can be provided in non-criminal matters concerning a legal person relating to the offense of bribery of a foreign public official pursuant to Article 1.3 of Law 144/99. Bank secrecy can be lifted during criminal investigations relating to the bribery of foreign public official pursuant to Article 5, Law no. 36/94 of September 29, as amended.

Complicity, Attempt, Conspiracy

Portuguese authorities stated that complicity, incitement, and authorization are all covered under Portuguese Criminal Code Article 26, which provides that any person who induces another person to commit a crime shall be treated as a principal. Criminal Code Article 27.1 provides that anyone who aids and abets in the commission of a crime will be punishable as an accomplice. The offense of attempt is covered by Criminal Code Article 22. Apparently, conspiracy is not punishable under Portuguese law.

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[1]U.S. government assessments of the implementing legislation of the following twenty-seven countries appear in last year's report: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Japan, Korea, Mexico, Poland, Iceland, Italy, Luxembourg, The Netherlands, Norway, the Slovak Republic, Spain, Sweden, Switzerland, and the United Kingdom.

3

Review of Enforcement Measures

Enforcement of National Implementing Legislation

As of July 2002, the Convention is in force for almost all of its signatory countries. The U.S. government recognizes that achieving the goals of the Convention, such as enforcement of national implementing legislation, will take time. Many of the Parties need to establish mechanisms for identifying potential violations and for identifying and correcting weaknesses in their implementation programs. Moreover, Parties' prosecutors need to gain experience in prosecuting these new laws. The U.S. government believes that the launch by the OECD Working Group on Bribery of the next stage of monitoring, Phase II enforcement reviews, will provide all participants with valuable information on enforcement and prosecutorial methods.

We are encouraging all participants to provide adequate resources to the Group for it to conduct these enforcement reviews and to increase significantly the number of such reviews undertaken each year. At the present rate of conducting two-to-four enforcement reviews per year, the OECD Working Group on Bribery will not accomplish the task of reviewing each Party until the year 2010. The U.S. government believes that a full cycle of reviews should be accomplished within five years; this would require an average of seven enforcement reviews per year. Such a schedule will not only provide each country reviewed early feed-back on its implementation and enforcement efforts, but it will also allow all participants to learn from one another. OECD Ministers recognized the importance of financial resources for peer review and for a timely assessment schedule in their 2002 Communique. In the coming year, the U.S. government will continue to urge Working Group Members to meet these important mandates from Ministers.

Under the Convention, it is the responsibility of each Party to implement and enforce its national laws and to be proactive and not await review by the OECD or other public scrutiny of its enforcement. The U.S. government is not aware of any prosecutions commenced by Parties to the Convention for violations of laws implementing the Convention, other than the cases the United States has prosecuted. While we are disturbed by continuing reports of alleged bribery of foreign public officials by firms based in countries where the Convention is in force, we are encouraged by information that allegations of bribery payments to foreign officials are being pursued by certain Parties.

The U.S. Government will continue to encourage bilateral and multilateral cooperation on this subject. The Working Group is one appropriate setting for exchanges

of information. In addition, we are encouraging expanded coordination between law enforcement and prosecution officials to promote enhanced cross-border cooperation in enforcement efforts. We expect that the Working Group's Phase II enforcement reviews will help us develop a fuller understanding of each country's procedures and methods for identifying and pursuing cases of transnational bribery. The United States continues to encourage all Parties to explore and investigate credible allegations against firms based in their territory.

Enforcement in the United States

In the twenty-five years since the passage of the Foreign Corrupt Practices Act (FCPA), the U.S. Department of Justice has brought thirty-four criminal prosecutions and seven civil enforcement actions under the antibribery provisions of the FCPA. In addition, the United States Securities and Exchange Commission (SEC) has brought several civil enforcement actions under the antibribery provisions and hundreds of cases under the books and records provisions. Since July 1, 2001, the following fourteen enforcement actions have been instituted:

- *United States v. Robert Richard King and Pablo Barquero Herndandez* (W.D. Mo. 2001)
  United States v. Richard Halford (W.D. Mo. 2001)
  United States v. Albert Reitz (W.D. Mo. 2001).
  A grand jury in Kansas City, Missouri, returned an indictment in July 2001 charging a Kansas City businessman and a Costa Rican national with conspiring to violate the FCPA and the Travel Act (incorporating the Missouri commercial bribery statute), as well as substantive violations of the FCPA and the Travel Act, in connection with an alleged scheme to bribe officials and political parties in Costa Rica to obtain a concession to build a new commercial port and resort on the Costa Rican coast. Trial is currently scheduled for June 2002. In the *Halford* and *Reitz* cases, the defendants entered pleas of guilty to conspiring to violate the FCPA. Sentencing for these defendants is pending.

- *United States v. Joshua Cantor* (S.D.N.Y. 2001)
  In the matter of American Banknote Holographics Inc. (SEC 2001)
  SEC v. Morris Weissman, et al. (S.D.N.Y. 2001).
  In a series of related criminal, civil, and administrative proceedings in July 2001, the Department of Justice and the SEC brought enforcement actions against officers of American Bank Note Holographics (ABNH) and its former parent company, American Bank Note Inc., both of whom were public companies, in connection with bribes paid to a Saudi Arabian official to obtain a contract to manufacture holographics for Saudi currency. Cantor, the president of ABNH, pleaded guilty to a felony violation of the FCPA, and ABNH agreed to a cease and desist order. The SEC's civil action against Weissman, the former CEO of ABN, and Cantor is pending, as is sentencing in the criminal case.

- *United States and SEC v. KPMG Siddharta Siddharta & Harsano and Sonny Harsano* (S.D. Tex. 2001)
  In the Matter of Baker Hughes Inc. (SEC 2001)
  SEC v. Eric L. Mattson and James W. Harris (S.D. Tex. 2001).
  In a series of related civil and administrative proceedings in September 2001, the Department of Justice and the SEC brought enforcement actions against an American company and its officers and the company's foreign-based accountants, in connection with the payment of a bribe to an Indonesian tax official to obtain favorable tax treatment. The foreign accounting firm and one of its partners agreed to a consent order.

  In addition, Baker Hughes consented to a cease and desist order.

  Trial is pending on the SEC civil injunctive complaint against the company's former Chief Financial Officer and Comptroller.

- *United States v. Daniel Ray Rothrock* (W.D. Tex. 2001).
  The defendant in this matter entered a plea of guilty in June 2001 to violating the accounting provisions of the FCPA in connection with a contract with the Russian government.

- *SEC v. Chiquita Brands International* (D.D.C. 2001)(SEC 2001).
  In this matter, the SEC brought civil and administrative enforcement actions in October 2001 premised on violations of the FCPA's books and records provisions arising out of payments by the company's wholly owned foreign subsidiary to Colombian officials to secure renewal of a license at a port facility. The SEC found that the parent company was not aware of the payments and noted it reported the payments and terminated the responsible employees. The company agreed to a cease and desist order and a settled complaint resulting in an injunction and a $100,000 fine.

United States v. David Kay and Douglas Murphy (S.D. Tex. 2001).
A grand jury in Houston, Texas, returned an indictment in December 2001 charging a vice-president of American Rice Inc. with twelve counts of violating the FCPA. The grand jury returned a superseding indictment in March 2002 charging the former Chief Executive Officer of the company with the same offenses. The indictment was dismissed on a pre-trial motion and the Department of Justice filed a notice of appeal in May 2002.

- *United States v. Gautam Sengupta* (D.D.C. 2002).
The defendant in this matter, a former World Bank official, pleaded guilty in March 2002, to mail fraud and to a violation of the FCPA for receiving kickbacks and facilitating a bribe to a Kenyan official by a Swedish company. Sentencing is pending.

- *SEC v. BellSouth Corp.* (N.D. Ga. 2002).
The SEC brought a civil and administrative enforcement action against BellSouth premised on violations of the FCPA's books and records and internal controls provisions arising out of payments made by BellSouth's Venezuelan and Nicaraguan subsidiaries. The SEC found that BellSouth's Venezuelan subsidiary, Telcel, authorized payments totaling over $10 million to offshore companies and improperly recorded the disbursements as payment for bona fide services. Telcel's internal controls failed to detect the unsubstantiated payments for at least two years. In addition, the SEC found that BellSouth's Nicaraguan subsidiary, Telefonia Celular de Nicaragua, S.A., improperly recorded payments to the wife of the Nicaraguan legislator who was the Chairman of the Nicaraguan legislative committee with oversight of Nicaraguan telecommunications. The company agreed to a cease and desist order and a settled complaint resulting in payment of a $150,000 fine.

Department of Justice Opinion Procedure

The Department of Justice also has provided assistance to American businesses engaged in international business transactions. Since 1980, the Department has issued thirty-eight opinions in response to requests from American businesses stating whether it would or would not take enforcement action if the requestors proceeded with actual proposed transactions. The opinion procedure is set forth at 28 C.F.R. Part 80. It is also available on the Fraud Section website at *http://www.usdoj.gov/criminal/fraud/fcpa.html*. The opinions themselves are not released, but "Opinion Releases" which describe the opinion without naming the requestor are issued for every opinion and are on the website. Recipients of a favorable opinion are entitled to a presumption of compliance in any subsequent enforcement action under the FCPA. In 2001 and 2002, the Department issued the following opinions:

- In Opinion Release 01-01, the Justice Department opined that a U.S. company could form a joint venture with a French company to which each company contributed existing contracts where certain precautions, including termination of existing agency contracts and the institution of a rigorous compliance program, had been taken to ensure that neither company nor the joint venture made any payments to foreign agents that could have been in furtherance of any pre-existing agreement to pay a bribe. The opinion was expressly conditioned on the Department of Justice's understanding that the French company had represented that none of the contracts it was contributing to the joint venture had been obtained by payments that would have been in violation of either the new French foreign antibribery law, or any applicable foreign or domestic antibribery law.

- In Opinion Release 01-02, the Justice Department opined that a U.S. company could retain as a consultant a company owned by a foreign official, provided that the official was not responsible for awarding any business to the company and undertook to recuse him/herself from any discussion or decision in which such award of business was contemplated.

- In Opinion Release 01-03, the Justice Department opined that a U.S. company could proceed with a transaction after investigating an employee's report that a dealer had made statements that the employee had understood to mean that payments to a public official had been or would be made. The company's investigation had uncovered no evidence to corroborate this statement, the dealer had affirmatively represented that no payments had been or would be made and had repeated that representation in a statement directed to the Department of Justice, and the proposed agreement with the dealer gave the U.S. company the right to audit the dealer and to terminate the agreement if it determined that an illegal payment had been made.

Finally, on March 19, 2002, the President signed Executive Order 13259 designating the European Union,

including its constituent organizations and agencies, and the European Police Agency as public international organizations for purposes of the FCPA, thus making bribery of officials of those organizations a violation of the FCPA. The OECD Convention includes officials of public international organizations within the definition of "public official" and the 1998 amendments to the FCPA to implement the Convention expanded the definition of public officials to include officials of such organizations.

U.S. Efforts to Promote Public Awareness

For many years prior to the adoption of the Convention, the U.S. government sought to educate the business community and the general public about international bribery and the FCPA. As a result, U.S. companies engaged in international trade are generally aware of the requirements of U.S. law. Since U.S. ratification of the Convention and the passage of the International Antibribery and Fair Competition Act of 1998, the U.S. government has increased efforts to raise public awareness of U.S. policy on bribery and initiatives to eliminate bribery in the international marketplace.

The Secretaries of Commerce, State, and the Treasury, the U.S. Attorney General and senior officials in their Departments speak out frequently against international bribery and have urged support for the Convention. For example, in letters published in the *International Herald Tribune* in July 2001 and *The Economist* in May 2002, Commerce Secretary Donald L. Evans promoted the importance of effective implementation and enforcement of national laws implementing the Convention and encouraged companies to embrace the objectives of the Convention by adopting anticorruption awareness and compliance programs.

Officials of the Commerce, State, and Justice Departments continue to be in regular contact with business representatives to brief them on new developments on antibribery issues and discuss problems businesses encounter in their operations. This close cooperation with the private sector was a contributing factor to the successful on-site visit to Washington, D.C., in March 2002 by examiners from member countries and the OECD Secretariat to prepare for the June 2002, Phase II OECD enforcement review of the United States. Additional information on public awareness programs of the U.S. government can be found in last year's report at *www.export.gov/tcc*.

Efforts of Other Signatories

Rigorous enforcement of these new laws against bribery of foreign public officials is one part of the process in making the Convention a success. Another very important element is raising public awareness of the laws. This includes informing the relevant prosecutorial authorities of the new tools they have to prosecute corruption, as well as counseling businesses and the general public about the laws.

For years, businesses from many of the signatory countries were able to bribe foreign officials without penalty; they even benefitted from being able to deduct such bribes from their taxes. Such actions are now illegal in most of the signatory countries. While businesses are responsible for understanding and complying with the laws in the environments in which they operate, it is also the responsibility of each Party to the Convention to publicize that bribes are no longer an acceptable way to obtain an international contract, and that serious criminal or civil penalties can be imposed upon those who bribe or attempt to bribe foreign public officials.

So important is this aspect of implementation that the Working Group on Bribery recommended as a result of a Phase II enforcement review that Finland:

> a) Undertake effective public awareness activities for the purpose of educating and advising the public and private sectors about the Convention and consider involving interested business associations and other non-governmental bodies in the delivery of these initiatives. (Revised Recommendation, Article I). *See* (*http://www.oecd.org/pdf/M00029000/M00029564.pdf)*.

Based on reports from U.S. embassies and public sources of information, we are discouraged by the lack of attention being given to this very important implementation issue. As Phase II enforcement reviews continue, we hope to see a more vigorous outreach effort by other signatories to explain the Convention and their new national implementing legislation. The United States has the most extensive public outreach program of any signatory. We are encouraging other Parties to undertake active public awareness programs. The OECD Working Group peer review of U.S. enforcement of the FCPA in June of 2002 is expected to provide an important opportunity to showcase the corporate compliance programs put in place by U.S. firms. The United States believes other countries

can learn from the U.S. private sector experience with voluntary internal compliance programs as an important complement to official enforcement actions.

Monitoring Process for the Convention

Monitoring is crucial for promoting effective implementation and enforcement of the Convention by signatory countries. The OECD has in place a comprehensive monitoring process that provides for input from the private sector and nongovernmental organizations. In addition to the OECD process, the U.S. government has its own intensive monitoring process, of which this annual report to the Congress is an integral part. The United States continues to encourage all signatories to participate fully in the OECD monitoring process and establish their own internal mechanisms for ensuring follow-through on the Convention by governments and the private sector. We also encourage other signatories to devote sufficient resources to ensure that monitoring is effective.

OECD Monitoring

The OECD has established a rigorous process to monitor implementation and enforcement of the Convention and of the 1997 Revised Recommendation of the Council On Combating Bribery In International Business Transactions (Revised Recommendation).

The monitoring process has two distinct stages, an implementation phase (Phase I) and an enforcement phase (Phase II). The objective of Phase I is to evaluate whether a Party's implementing legislation meets the standards set by the Convention and the Revised Recommendation. The objective of Phase II is to study and assess the structures and methods of enforcement put in place by countries to enforce the application of those laws. For a detailed description of the framework for monitoring the Convention, which include a summary of the modalities for the process, please refer to this chapter in the 2001 report to Congress at *www.export.gov/tcc*. The modalities are also available on the OECD's public website at:

- *http://www.oecd.org/oecd/pages/home/display-general/0,3380,EN-document-86-nodirectorate-no-6-7218-31,00.html* for Phase I and
- *http://www.oecd.org/oecd/pages/home/display general/0,3380,EN-document-86-nodirectorate-no-6-7223-31,00.html* for Phase II.

Phase I of the Monitoring Process

Through April 2002, the Working Group completed reviews of the implementing legislation of thirty-one signatory countries and reported the results to OECD Ministers. The individual country reviews and reports to Ministers are posted on the OECD website at:

- *http://www.oecd.org/EN/documentation/0,,EN-documentation-86-nodirectorate-no-no-no-31,00.html*.

The Commerce Department Trade Compliance Center also maintains a link to these materials through its site at: *www.export.gov/tcc*. U.S. government assessments of the implementing legislation of signatories reviewed since our last report, and relevant updates to prior assessments, are included in Chapter 2 of this report. For all other U.S. government assessments, please refer to the 2001 report to Congress available at: *www.export.gov/tcc*.

Phase II of the Monitoring Process

Phase II of the monitoring process — the goal of which is to study the structures in place to enforce the laws and rules implementing the Convention and the Revised Recommendation and to assess their application in practice — began in late 2001 with a review of Finland followed by a review of the United States in the spring of 2002. Iceland and Germany are scheduled to undergo review in the second-half of 2003. To carry out Phase II monitoring, the Working Group will conduct an evaluation for each country that has undergone a Phase I review. The Phase II reviews will include an on-site visit to the examined country in accordance with established terms of reference and procedures.

The subsequent evaluation will be based on replies by the country to the Phase II questionnaire, the results of on-site visits, deliberations within the Working Group, and discussions with the private sector. An objective of Phase II is to improve the capacity of Parties to fight bribery in international business transactions through critical mutual evaluation of each Party's compliance with the requirements of the Convention and Revised Recommendation. Shortcomings will be identified and effective approaches to implementation will be shared with the other Group members.

Phase II Review of Finland

The Phase II review of Finland began with completion of a questionnaire and answers to follow-up questions by Finland, followed by an on-site visit conducted in Finland in September 2001. The team for the on-site visit

from the OECD Working Group was composed of lead examiners from the Czech Republic and Korea as well as four representatives of the OECD Secretariat and a tax consultant. After the on-site visit, the lead examiners and the OECD Secretariat prepared a draft report summarizing the questionnaire responses and the examiners' findings and recommendations for the Working Group's approval.

At the November 2001 meeting, the Working Group conducted its peer review of Finland's enforcement by receiving oral reports from the examiners and reviewing the draft report of the on-site visit. The Working Group took the task of monitoring Finland's implementation and enforcement framework seriously, as this was the first Phase II review and would, along with the subsequent U.S. review, set the standard for the Phase II monitoring process.

The Phase II on-site visit in Finland consisted of a session with representatives from the Finnish private sector in addition to interviews with the Finnish government. The examiners and the Secretariat met a broad array of private sector representatives for extensive consultations. These representatives included: the Central Chamber of Commerce, Transparency International, the OECD Business Industry Advisory Committee (BIAC), Finnish trade unions, law firms, and banks.

To date, Finland has had no international bribery cases — and few domestic bribery cases — so there has been little precedent in the form of case law for the examiners to evaluate. The examiners and the Secretariat found that Finnish companies that engage in international business, particularly across the border in Russia, were potentially susceptible to international corruption. In addition, private sector representatives informed the examiners that although there is little corruption in Finland itself, its companies face corruption in international business transactions and need to be better informed of the Convention. The Finnish review, therefore, focused primarily on the Finnish government's efforts to publicize the Convention.

The Finnish representatives explained that Finland has published and circulated the OECD Guidelines for Multinational Enterprises that mention the Convention; it also informed its embassies of the Convention when its implementing legislation entered into force. However, according to the Finnish private sector, little information or training has been provided to either the private sector or the government compared to other countries. The Working Group recommended that Finland take steps to better inform both its public and private sectors of its new laws implementing the Convention, but the manner in which it should do so is up to the Finnish government.

While the Working Group recognized that Finland has the right to decide how to best undertake its investigations, the Working Group also recommended that Finland consider clarifying within its government what the responsibilities are for state authorities for implementing the Convention. The Working Group further recommended that Finland provide additional training and specialization in the field of prosecuting foreign bribery to its prosecutors and law enforcement agencies, particularly concerning legal persons and prosecutorial discretion, the statute of limitations, and coverage of state-owned companies.

The Phase II review also focused on Finland's implementation of the Revised Recommendation.The examiners made several recommendations to Finland on enforcement of its tax, accounting, and money-laundering legislation. The Working Group agreed that Phase II monitoring will focus more attention on tax, accounting, and money-laundering legislation than Phase I, as effective enforcement of such laws is key to detecting and prohibiting bribery.

For the detailed Working Group Report on Finland's Phase II review including all of the Working Group's recommendations, *See*:

http://www.oecd.org/pdf/M00029000/M00029564.pdf.

Phase II Review of the United States

In the same manner as the Finnish Phase II review, the review of the United States began when the U.S. government provided comprehensive written responses to a questionnaire and follow-up questions from the OECD Secretariat and experts from the lead-examiner countries, the United Kingdom and France. Copies of these responses have been posted on the Department of Justice's website at *www.usdoj.gov/criminal/fraud/fcpa*.

A week-long visit to Washington, D.C., followed, during which time the examiners interviewed representatives of the Fraud Section of the Department of Justice's Criminal Division, which enforces the criminal provisions of the FCPA, and staff from the Securities and Exchange Commission, which together with the Department of Justice enforce the civil provisions of the FCPA. Examiners also talked to other representatives of the Departments of Justice, State, and Commerce, as well as the Federal Bureau of Investigation, the Internal Revenue Service, and the Defense Criminal Investigative Service. In addition, the examiners heard from members of the private bar, nongovernmental organizations, labor unions

and the accounting profession, who provided information concerning accounting controls, compliance programs, internal investigations, and the Justice Department's Opinion Procedure. The examiners also held meetings with members of the staff of the Senate Banking Committee and the House Committee on International Relations.

Following the on-site visit, the examiners prepared a draft report, which was scheduled for consideration by the full Working Group at its plenary meeting on June 12-14, 2002. The final report and recommendations will become a public document and be placed on the OECD website soon thereafter.

OECD Monitoring and Resources

With Phase II monitoring underway, the Working Group now needs to concentrate on ensuring that the Convention continues to be an effective instrument by rigorously enforcing its obligations. However, the monitoring activities of the Working Group are resource intensive. The OECD budget does not provide sufficient funds and staff resources to properly carry out the agreed monitoring program. The United States takes monitoring of the Convention very seriously and has committed significant resources to this endeavor, at times through substantial supplemental funding for the Working Group. Recognizing the need for increased funding for the Working Group, in 2002 the United States and other committed governments pressed for language in the 2002 OECD Communique of Ministers highlighting the importance of vigorous enforcement of the Convention and underscoring the need for additional resources. In the 2002 OECD Communique, Ministers agreed:

> To urge Parties to the OECD Anti-Bribery Convention to enforce rigorously the Convention and call on those that have not yet done so to adopt implementing legislation as soon as possible; others should remedy identified deficiencies in their implementing legislation without delay. We urge all Parties to enforce these laws diligently. We reiterate the principle of openness of the Convention to non-signatories in accordance with the terms of the Convention and its Commentaries, the requirement of rigorous monitoring and the mandate to pursue work to strengthen the Convention. We call on all Parties to ensure that adequate means are made available for both an expedited peer monitoring process and the implementation of national commitments. Parties to the Convention should assess whether there are gaps in the Convention and related anti-bribery instruments and identify possible solutions; we look forward to a report to Ministers in 2003.

The Communique language reflects the recognition by all participants of the responsibility of each to support the important work of the Group. With an expedited Phase II enforcement review process, we hope that a complete cycle of Phase II reviews will be accomplished by mid-2006. Each review will contribute valuable information not only for the country undergoing review, but also for each participant in the Working Group. Each review will also contribute to a body of knowledge that will inform the Group on how to strengthen the Convention in the future.

Monitoring of the Convention By the U.S. Government

Monitoring implementation and enforcement of the Antibribery Convention has been a priority for the U.S. government since it entered into force. The Bush Administration is committed to ensuring full compliance with agreements with our trading partners. At the Commerce Department, monitoring compliance with the Convention — and international agreements relating to trade generally — remains a high priority. Other U.S. agencies also are actively involved and are making important contributions. The Commerce, State, Justice, and Treasury Departments and the staff of the SEC continue to cooperate as an interagency team to monitor implementation and enforcement of the Convention. Each agency brings its own expertise and has a valuable role to play.

Participation in the OECD Working Group on Bribery and preparation of this annual report to Congress continues to be an integral part of the monitoring process within the U.S. government. For a more detailed description of the U.S. government monitoring process, please refer to our 2001 report to Congress at *www.export.gov/tcc*.

In the year ahead, the Department of Commerce, in close collaboration with the State and Justice Departments and other responsible agencies, will continue its rigorous monitoring of the Convention. The focus will be on monitoring the enforcement by Parties of their new laws implementing the Convention. The U.S. government will enhance its efforts to urge the relevant authorities in each Party to address credible allegations of bribery of foreign public officials. When information is received relating to acts of bribery that may fall within the jurisdiction of other Parties to the Convention, the information will be forwarded, as appropriate, to

national authorities for action. We are beginning regular bilateral contacts with other Parties to review allegations of bribery and consider the scope for shared action to investigate and follow up. In addition, as Parties to the Convention, we must all take preventive action when we learn bribes are being solicited in an international tender. In this regard, the U.S. government will seek to engage other Parties to take appropriate coordinated action when such allegations are made. Finally, we will also continue to work closely with the private sector and non-governmental organizations to heighten public awareness of the problems of bribery in international business transactions and how the Convention should be used to combat this costly form of transnational corruption.

4

Laws Prohibiting Tax Deduction of Bribes

The Organization for Economic Cooperation and Development (OECD) Council made an important contribution to the fight against bribery in 1996 by recommending that member countries that had not yet disallowed the tax deductibility of bribes to foreign public officials should reexamine such treatment with the intention of denying deductibility. This recommendation was reinforced in the OECD Council's 1997 Revised Recommendation on Combating Bribery in International Business Transactions, which laid the foundation for negotiation of the OECD Antibribery Convention. All thirty-five signatories to the Convention have agreed to implement the OECD Council's recommendation on denying the tax deductibility of bribes.

Signatories to the Antibribery Convention have made substantial progress on implementing the OECD Council's recommendation to disallow the tax deductibility of bribes. Only one OECD member country (New Zealand) has reported that it has not yet completed action necessary to disallow these deductions. Legislation was introduced in New Zealand on December 3, 2001 making business-related bribes non-deductible for tax purposes. The proposed amendment will make bribes paid to foreign and domestic public officials in the conduct of business non-deductible. The U.S. government report on laws relating to the tax deductibility of bribes for other countries can be reviewed in the 2001 report to Congress at *http://www.tcc.mac.doc.gov/cgi-bin/doit.cgi?204:71:619709233:8*, which remains unchanged from last year. Furthermore, as a result of the Phase II review of enforcement measures established by Finland to implement the Antibribery Convention, Finland has decided to strengthen its laws relating to the tax deductibility of bribes.

Despite important positive steps taken by signatories to the Convention, we remain concerned that tax deductibility is still continuing. Deductibility in some signatory countries that have laws currently in effect may continue for one or more of the following reasons: The legal framework may disallow the deductibility of only certain types of bribes or bribes by companies above a certain size; the standard of proof for denying a tax deduction (e.g., the requirement of a conviction for a criminal violation) may make effective administration of such laws difficult; and the relevant laws may not be specific enough to deny deductibility of bribes effectively in all circumstances. Whatever the nature of the legal or administrative loophole that makes it possible to deduct a bribe to a foreign public official, the practice must be eliminated. Further, it must be recognized that enactment of rules denying deductibility is only the first step. Careful monitoring is needed to ensure that the rules are actually enforced, and the United States will continue to play an active role in that effort.

As part of the monitoring process on the Convention and the OECD Council's recommendation, the OECD gathers information on signatories' laws implementing the recommendation on tax deductibility. Information on current and pending tax legislation regarding the tax deductibility of bribes is available on the OECD website *http://www.oecd.org/pdf/M00018000/M00018527.pdf.* Since 1998, the OECD has posted country-by-country descriptions of the treatment of the tax deductibility of bribes in signatory countries and a summary of pending changes to their laws. The information on the website is based entirely on reports that the signatories themselves provide to the OECD Secretariat.

The U.S. Treasury Department is continuing to work to ensure that the Committee of Fiscal Affairs, the OECD body responsible for tax issues, takes an active role in monitoring the progress of countries in implementing the OECD Council's recommendation. Treasury is also continuing to provide U.S. technical expertise to the Committee on Fiscal Affairs in order to assist members in their monitoring work. For example, with significant assistance from U.S. Treasury officials, the Committee on Fiscal Affairs published a *Bribery Awareness Handbook*, which is designed to serve as a manual for tax officials in countries to assist them in detecting bribes. In addition, Treasury officials recently participated in a detailed review of Finland's laws relating to the tax deductibility of bribes as part of the OECD Working Group on Bribery's Phase II review of measures established by Finland to enforce the Convention. This was the first detailed review of the implementation of a signatory country's laws relating to the tax deductibility of bribes. As a result of this review, Finland has decided to strengthen further its laws relating to the tax deductibility of bribes. For the specific Working Group recommendations to Finland on this issue, *See*: *http://www.oecd.org/pdf/M00029000/M00029564.pdf*.

5

Adding New Signatories to the Convention

Looking ahead, the OECD Working Group on Bribery and the United States envisage that a targeted expansion of the Antibribery Convention membership to appropriate states could help to eliminate bribery of foreign public officials in international business transactions. We expect that a small number of additional qualified applicants may satisfy the conditions for Working Group observership or full accession to the Convention in the coming years. The Working Group is considering options to refine the existing criteria for new applicants for accession. The Group recognizes the need to continue its work on the criteria, in order to be prepared to reply to the interest expressed by future applicants in a timely manner.

Development of Accession Criteria

Article 13.2 of the Convention provides that it shall be open to accession by non-signatories that have become full participants in the OECD Working Group on Bribery, or any successor to its functions. In addition, the OECD Commentaries on the Convention permit non-signatories to participate in the Working Group provided that they accept the 1997 OECD Revised Recommendation of the Council on Combating Bribery in International Business Transactions and the 1996 OECD Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials.

Faced with an increasing number of requests for accession to the Convention, the Working Group in 1999 made a first effort to define criteria and entrance procedures for Convention accession. In October 1999, the Working Group reaffirmed the use of traditional OECD criteria for participation by non-member countries in OECD work as set forth in an OECD Council Resolution: they should be "major players" whose inclusion would provide "mutual benefit." The approach agreed upon by the Working Group was an attempt to create a framework for a selective increase in signatory states, while at the same time eliminating inappropriate motivations for accession (e.g., use of accession as a prestige symbol, as proof of European integration, or as a stepping stone to participation in other OECD bodies). In presupposing a slow expansion and limiting membership growth to carefully chosen states, the policy proposals also were intended to preserve the critically important ability of the Working Group to continue its evaluation of Convention implementation and, equally significant, to not hinder the launch of Phase II enforcement reviews.

Based on the most recent experience of trying to apply the existing criteria for accession, many countries in the Working Group believe further work is needed to refine the criteria and develop a shared understanding of how to

apply them. In addition, the Group is aware that resource constraints will affect its ability to accept new members and prospective Convention signatories, given the high cost of quality peer review. The Working Group continues to discuss the delicate balance inherent in maintaining an open Convention, while upholding high standards of monitoring and mutual evaluation. In an April 2002 report to the OECD Council, the Working Group stated: "The Group has discussed seriously how to reconcile the fundamental principle of openness of the Convention with both the challenges of rigorous monitoring to ensure that legislation implementing the Convention is adequate and effectively enforced and the pursuit of other aspects of the mandate given by the Council to the Working Group within the resources available."

The United States believes the Convention should be open to "major players" providing "mutual benefit." The United States defines "major player" as a country with significant exports and/or a significant market share in export sectors in which commercial bribery is prevalent. By agreement in the Working Group, such sectors might include, but are not limited to: defense, aviation, construction, and telecommunications. A "major player" is a country whose multinational exporting firms are believed to contribute to the problem of transnational corruption by offering bribes to foreign public officials to obtain or retain business. The United States believes that such countries should be the primary candidates for future accession to the Convention, in order to extend its disciplines to the companies most likely to engage in transnational bribery. While a range of countries continues to express interest in the Convention, few of them are home to multinational companies with significant exports in the key sectors of concern.

Application of Accession Criteria

In April 2001, the Working Group on Bribery completed its first examination of an applicant for accession to the Antibribery Convention. In response to instructions of the OECD Council to provide a technical opinion on the participation of Slovenia in the Working Group, the Group recommended that Slovenia be invited to become a full participant. Slovenia subsequently acceded to the Convention and deposited its instrument of ratification on September 6, 2001. Slovenia's accession marked the first time that Convention accession and Working Group membership were offered to a new country since the Convention came into force in February 1999.

In its report to the OECD Council on Slovenia's examination, the Working Group noted that resource constraints would need to be factored into future decisions on expansion. In addition, the Group cautioned that the recommendation for immediate full participation of Slovenia should not be regarded as a precedent for future candidates. The Group determined that candidates not as well qualified as Slovenia might expect to be offered a period of observership in the Group, or be advised to pursue association with other anticorruption instruments. It was also apparent the Group remained concerned that applicant states not see accession as a prestige symbol, or as a stepping stone to participation in other OECD bodies. Finally, the United States and other members of the Working Group expressed special interest in seeking more regional diversity among prospective signatories.

In November of 2001 and April of 2002, the Working Group reviewed the applications of Croatia, Estonia, Latvia, Lithuania, and Romania after the OECD Council requested a "technical opinion" of their qualifications for membership and accession to the Convention. Based on these reviews, the OECD Working Group on Bribery is expected to report to the Council on these requests this summer. The United States is working closely with other members of the OECD Working Group on Bribery to develop constructive approaches in response to the desire of many countries to be associated with the Antibribery Convention, the Group, and its work.

6

Subsequent Efforts to Strengthen the Convention

During the negotiation of the Organization for Economic Cooperation and Development (OECD) Antibribery Convention, the United States sought to include coverage of bribes paid to political parties, party officials, and candidates for public office. These channels of bribery and corruption are covered in the Foreign Corrupt Practices Act (FCPA). They are not, however, specifically covered in the Convention.

The United States has repeatedly expressed its concern that failure to prohibit the bribery of political parties, party officials, and candidates for office may create a loophole through which bribes may be directed in the future. Although the FCPA has prohibited the bribery of these persons and organizations since 1977 and no such loophole in U.S. law has existed, our experience shows that firms do attempt to obtain or retain business with bribes of this nature. The first case brought under the FCPA involved a payment to a political party and party officials. In the fight against corruption, bribes to political parties, party officials, and candidates are no less pernicious than bribes to government officials.

The United States has been unable to convince other Convention signatories to include this broader coverage of bribery in the Convention. We did succeed, however, in getting signatories to keep this issue and certain other issues under study. Five issues were identified by the OECD Council in December 1997 for additional examination:

- Bribery acts in relation to foreign political parties.
- Advantages promised or given to any person in anticipation of that person becoming a foreign public official.
- Bribery of foreign public officials as a predicate offense for money-laundering legislation.
- The role of foreign subsidiaries in bribery transactions.
- The role of off-shore centers in bribery transactions.

The United States has continued to express strong interest in action by the OECD Working Group on Bribery to broaden coverage of the Convention. The subject remains on the active OECD agenda for further work. In successive Ministerial Communiques, OECD Ministers have called for attention to the five issues identified for future action. In addressing these issues, the 2002 Communique stated that Ministers expected progress over the coming year: “Parties to the Convention should assess whether there are gaps in the Convention and related anti-bribery instruments and identify possible

solutions; we look forward to a report to Ministers in 2003."

Outstanding Issues Relating to the Convention

Political Parties, Party Officials, and Candidates

The United States has kept the issues of bribes to foreign political parties and candidates for office on the OECD agenda. Nevertheless, other countries continue to express limited interest in pursuing this work actively. Their resistance seems to arise in part from the fact that many countries implemented the Convention by simply amending their domestic corruption laws, rather than enacting a freestanding law, such as the FCPA. For these countries expanding their definition of "public official" to include political parties, party officials and candidates would potentially effect their domestic corruption laws as well. In addition, other countries argue that such bribes already are covered by their national laws (e.g., through laws on trading in influence). We are concerned, however, that these laws may not be sufficiently comprehensive to encompass all corrupt payments to political parties, party officials, and candidates. Nevertheless, most countries believe that Parties should implement the Convention as it is and monitor implementation over time to see whether changes are necessary.

In October 2000, at La Pietra, Italy, Transparency International (TI) convened a meeting of twenty-eight individuals from nine countries representing the private sector, public institutions, and civil society to review issues relating to corruption and political party financing. The U.S. government participated in these discussions, which resulted in the "La Pietra Recommendations" — five proposals intended to address concerns that payments to political parties may be used to circumvent the intentions of the Convention. An informal OECD Working Group on Bribery consultation with civil society, the private sector, and trade union representatives was held in February 2001 to consider possible future actions on the bribery of political parties and candidates. Experts drawn from the group of participants at La Pietra presented the recommendations and sought to illustrate potential problem areas due to the lack of coverage of the Convention of certain bribe payments made to political parties and their officials.

The U.S. delegation has continued to press the OECD Working Group on Bribery to analyze the issue of bribes to political parties and candidates. In the summer of 2001, Working Group members were asked to complete a questionnaire concerning coverage of their national laws implementing the Convention to determine if bribes to political parties and candidates are covered. The questionnaire also requested information concerning bribery transactions involving foreign subsidiaries. Several countries supplied their responses to the questionnaire in time for the April 2002 Working Group meeting. As there remained a number of responses outstanding, however, the OECD Working Group on Bribery intends to have its discussion later in 2002, when more replies have been received and can be evaluated.

Bribery as a Predicate Offense to Money Laundering

Article 7 of the Convention requires a Party that has made bribery of its own public officials a predicate offense for applying its money-laundering legislation do so on the same terms for the bribery of a foreign public official. Based on the reviews of implementing legislation, most signatory countries do make bribery of a foreign public official a predicate offense for application of money-laundering legislation in accordance with this standard. However, some signatories have not made bribery of their public officials a predicate offense; other signatories have placed conditions on the application of their money-laundering legislation. For these reasons, there are differences among the signatories with respect to money-laundering that could result in the uneven application of the Convention.

Many signatory countries, particularly the European and civil law countries, define money laundering as the concealment of proceeds from all "serious crimes," as that term is defined under their domestic legislation. Others, like the United States, define predicate crimes by listing specific offenses or statutory provisions. How jurisdictions define "serious" cannot be generalized. Definitions are based on individual domestic legal systems in each country, i.e., punishable by imprisonment of a certain period of time or roughly the distinction between a misdemeanor and a felony.

Therefore, if all Parties to the Convention would make bribery a serious offense for the purposes of domestic money-laundering legislation, there would seem to be no need for going beyond the requirements in Article 7 of the Convention. Language endorsing the application of bribery as a predicate offense for money laundering was included in the G-8 conclusions at Moscow in October 1999. Since then, a consensus appears to have emerged within the OECD Working

Group on Bribery on the need to make bribery a predicate offense for money-laundering legislation. In its June 2000 Ministerial Communique OECD Ministers recommended that bribery of foreign public officials should be made a serious crime for triggering the application of money-laundering legislation. The 2001 Ministerial Communique included money laundering among the issues that the OECD would address further in the following year. In the 2002 Communique, OECD Ministers encouraged the OECD and the Financial Action Task Force (FATF) to strengthen their cooperation on issues of mutual concern and commended the FATF's work to combat money laundering. The Working Group on Bribery has committed to review any action FATF has taken regarding the recommendation of Ministers; it will examine this issue during Phase II enforcement reviews.

In the United States, bribery of a foreign public official in violation of the FCPA is a predicate offense for purposes of the Money Laundering Control Act, and legislation adopted in 2001 established foreign corruption as a predicate offense for money laundering under U.S. law. As part of the National Money Laundering Strategy, on January 16, 2001, the U.S. government released new guidance to help U.S. financial institutions avoid transactions that might involve the proceeds of official corruption. The Guidance on Enhanced Scrutiny for Transactions That May Involve the Proceeds of Foreign Official Corruption (Guidance) encourages U.S. financial institutions to scrutinize large accounts and transactions that may involve the proceeds of corruption by senior political figures, their immediate families, or close associates. The Guidance, issued by the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the Department of State, is available on the Internet at *http://www.treas.gov/press/releases/docs/guidance.htm?IMAGE.X=16\&IMAGE.Y=8*. Furthermore, in the past year the U.S. government has integrated the fight against corruption into our efforts to address crime and terrorism. Corrupt officials, knowingly and unknowingly, aid terrorists by facilitating the illicit laundering of funds and illicit trade of weapons, passports, drugs, and persons. This is illustrated by Congress' passage of the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism*, (USA Patriot Act) *Act of 2001*, H.R. 3162. As noted above, the USA Patriot Act establishes stricter "know your customer" rules, placing additional responsibilities on financial institutions to ensure that corrupt foreign officials do not use the U.S. financial system to hide illicitly acquired assets. As noted above, the USA Patriot Act also established foreign corruption as a predicate offense for money laundering under U.S. law.

On October, 30, 2000, eleven major U.S. and European private banks concluded their year-long effort to establish money-laundering guidelines. The Global Anti-Money Laundering Guidelines for Private Banking — also known as the Wolfsberg AML Principles — stipulate that the banks will conduct due diligence on the source of wealth and the source of funds and will accept only those clients reasonably established to be legitimate. The principles can be viewed at *http://www.wolfsberg-principles.com/*.

The Role of Foreign Subsidiaries

Foreign-incorporated subsidiaries are potentially subject to the law of the country in which they are incorporated and the law of any country in which they operate, or where such subsidiaries take any action in furtherance of an unlawful payment. For example, a foreign-incorporated subsidiary of an American company, just like any foreign company, is subject to the FCPA, if it takes any act in furtherance of the offer, promise to pay, payment, or authorization of an offer, promise, or payment of a bribe within U.S. territory. The U.S. government understands that other Parties to the Convention may assert a similar form of territorial jurisdiction, although there are some gaps in the coverage of extra-territorial acts by corporations.

No OECD member country holds parent corporations absolutely liable for the criminal acts of their subsidiaries. In the United States and among other Convention signatories that impose liability on legal persons, parent corporations may be held liable only for the acts of their subsidiaries that are authorized, directed, or controlled by the parent corporation. The United States has, therefore, urged further examination of strong standards of corporate governance, business ethics, and international accounting standards to ensure that foreign subsidiaries do not use their independence to obtain business through means prohibited to their parents.

The Working Group has recommended that countries introduce the concept of corporate responsibility of the parent in the supervision of the activities of the foreign subsidiary. It also has considered whether civil sanctions arising from the lack of effective supervision merited further examination. The Group also recommended the encouragement of corporate governance programs to promote self-regulation. The Working Group will consider the nature and the extent of the issues concerning

bribery transactions that involve foreign subsidiaries when it reviews the questionnaire issued to signatories in summer 2001 concerning bribes to political parties and candidates. In addition, the Working Group is looking at the treatment of bribery transactions that involve foreign subsidiaries in the Phase II peer reviews of each Party's actions to enforce its domestic law implementing the Convention.

The Role of Offshore Financial Centers

There appears to be broad agreement on the need to encourage adherence to internationally accepted minimum standards regarding anti-money laundering, financial regulation, company law, and mutual legal assistance. These issues are not exclusive to off-shore centers, nor are they restricted to the fight against bribery and corruption. The Working Group has dedicated several sessions to the issue of off-shore centers to determine the significance of the problem as it relates to bribery of foreign public officials and whether there are aspects of the problem not being dealt with in other forums that might benefit from Working Group activity. This work continues.

Compliance with international norms is a focal point of the Financial Stability Forum's Working Group on Offshore Financial Centers, while the Financial Action Task Force's Ad Hoc Group on Noncooperative Countries and Territories is concentrating on the ability and willingness of jurisdictions to cooperate in the fight against money laundering. Other international forums with related initiatives include the United Nations, the European Union, the Council of Europe, and the G-8. Bribery transactions frequently are carried out, at least in part, in jurisdictions that do not participate in arrangements for international cooperation. This greatly complicates multilateral efforts to promote transparency in financial and commercial transactions and greater mutual legal assistance.

Other Issues Relating to Coverage

Immediate Family Members of Foreign Public Officials

In the Working Group on Bribery, the United States has informally raised the question of whether the Convention provides adequate coverage of bribes paid to immediate family members of foreign public officials. There is general agreement that bribes paid to a government official through a family member — either at the direction of a corrupt foreign official, or where there is an understanding that the family member will pay some or all of the bribe to the official, or the official will otherwise benefit — is adequately covered by the Convention. Since all other bribes paid to officials through intermediaries are already covered by the Convention, we thus far have found no support for expanding the Convention to provide for an explicit prohibition against bribes paid to immediate family members in the absence of the direction of a government official or absent the intent or expectation of the bribe payor that all or a part of the bribe will be paid to a government official or the official will otherwise benefit. Indeed, the United States does not provide in its FCPA for coverage of payments to family members apart from such cases. In the ongoing process within the OECD of reviewing the implementation and enforcement of the Convention by each Party, we will continue to examine whether bribes paid to immediate family members may provide a loophole of sufficient magnitude so as to undermine effective implementation of the Convention.

Private Sector Corruption and Other Issues

The issue of private sector corruption, which goes beyond the scope of the Convention, has been addressed in sessions of the OECD Working Group on Bribery and in informal consultations with representatives of business and civil society. In April 2002, the Working Group held a one-day consultation with representatives of Transparency International, the International Chamber of Commerce (ICC), the OECD Business and Industry Advisory Committee (BIAC), and the OECD Trade Union Advisory Committee (TUAC) on the topic of private sector bribery. A panel of participants made presentations advocating the addition of disciplines covering private sector bribery to the Convention. The Working Group agreed to study the ICC conclusions and will review the matter at its October 2002 meeting.

The Working Group sessions with TUAC and BIAC also have dealt with the solicitation of bribes and the protection of whistle blowers (either within government or business) who come forward to expose corruption. Solicitation remains on the agenda of the Working Group as an area of concern and possible followup in the context of the Revised Recommendation. Whistle blowing is a subject that goes beyond the scope of bribery of foreign public officials. Nonetheless, in considering further actions to explore the potential problems of solicitation and the role played by whistle blowing in the fight against corruption, the Working Group agreed to include questions related to both subjects in the Phase II questionnaire.

In addition, the Working Group has been examining private sector corruption in terms of the relationship between the Convention and related OECD anticorruption initiatives and the OECD Guidelines for Multinational Enterprises (the Guidelines). The OECD guidelines offer yet another vehicle for advancing the goals of the Convention. Originally adopted in 1976, the Guidelines are non-binding recommendations to enterprises, made by the thirty-three governments that adhere to them. Their aim is to help Multinational Enterprises (MNEs) operate in harmony with government policies and with societal expectations. In the most recent revision adopted by the OECD ministers on June 27, 2000, an entire chapter on combating bribery that tracks closely the key provisions of the Convention was inserted into the text of the Guidelines. While the Guidelines are voluntary and not legally enforceable, they draw attention to the pernicious effects of bribery and corruption and encourage companies to take a proactive approach to addressing the problems. The follow-up mechanism described in the Procedural Guidance details how the National Contact Points for the guidelines can assist parties in resolving issues pertaining to the Guidelines.

Antibribery Programs and Transparency in International Organizations

Congress directed that the annual report should include an assessment of antibribery programs and transparency regarding international organizations covered by the International Anti-Bribery and Fair Competition Act (IAFCA). More than eighty organizations fall within the IAFCA's purview. They include large institutions, such as the World Bank, International Monetary Fund (IMF), and the World Trade Organization (WTO), as well as smaller and less well-known technical bodies.

Under the Convention, any official or agent of a public international organization is considered a "foreign public official" and thus must be covered by a legal prohibition against bribery. Since the Foreign Corrupt Practices Act (FCPA) did not include officials of public international organizations in its definition of a "foreign official," the United States needed to amend the FCPA to bring it into conformity with the Convention. The amendment, embodied in the IAFCA, applies this provision to all public international organizations designated by executive order under Section 1 of the International Organizations Immunities Act (22 U.S.C. 288) (IOIA) and to any other international organization designated by the President by executive order for the purposes of the FCPA.

U.S. agencies have selected for review several major international organizations that have the potential to affect international bribery on a large scale through their policies and activities. International financial institutions — including the IMF, the World Bank, and regional development banks — are particularly important because they extend financial or development assistance amounting to billions of dollars annually in countries around the world. These institutions have an important role to play in promoting good governance and in assisting borrowing countries to combat corruption. We have included the WTO, the United Nations, the Organization of American States (OAS), the Organization for Economic Cooperation and Development (OECD), and the Organization for Security and Cooperation in Europe (OSCE) because of their active work in promoting international antibribery initiatives and encouraging national governments to strengthen relevant domestic laws. While the Department does not provide information on INTELSAT as we have in prior years due to its privatization, we continue to include information with regard to the International Telecommunications Union (ITU).

As a matter of policy, the United States seeks to encourage all public international organizations to maintain high standards of ethics, transparency, and good business practices in their operations. The greater attention given to international bribery issues over the past several years, in the OECD and other forums, has helped to promote positive change in many organizations.

International Financial Institutions

Recognizing the importance of corruption as an international development and financial issue, the United States has, in cooperation with other shareholder countries, aggressively pressed the international financial institutions (IFIs) to implement anticorruption strategies, policies, and programs. As a result, major financial institutions — the International Monetary Fund (IMF), and the multilateral development banks (MDBs), i.e., the World Bank, the European Bank for Reconstruction and Development, the African Development Bank, the Asian Development Bank, and the Inter-American Development Bank — are playing a growing role in promoting good governance, transparency, and accountability.

An overview assessment of IMF and MDB antibribery and good governance activities is provided below. A more detailed discussion of significant steps taken by the IMF and the MDBs may be found in the reports submitted to the Congress in 1999, 2000, and 2001 pursuant to this legislation.[1] Relevant information is also in the report of October 2001 submitted by the Department of the Treasury to the Congress on "MDB Monitoring/ Supervision and Anti-Corruption Programs."[2] In addition, all of the IFIs post materials related to their good governance, transparency, and antibribery activities on their respective websites.[3]

All the IFIs are actively engaged in providing financial and technical assistance to borrowing countries to assist in combating corruption, including efforts to promote the rule of law and in judicial reform, civil service reform, independent central banks, stronger procurement systems, independent audits of government programs, and efforts to counter financial abuse, including money laundering.

International Monetary Fund

The IMF has worked to improve transparency and governance at the IMF itself; it strongly encourages member countries to enhance transparency, strengthen governance, and take other steps to combat corruption.

1997 IMF Staff guidelines call for IMF staff to place a high priority on promoting good governance; these guidelines outline ways this might be accomplished. Attention to good governance is reflected through a range of IMF work, including the promotion of codes and standards embodying good practices including providing high-quality and reliable data, openness in fiscal policy, and openness in monetary and financial policies. It is also reflected in policies that have expanded the range of IMF documents that are made available to the public, including through the IMF's website, regarding both the institution itself and its relations with member countries. And, attention to good governance is reflected in the use of conditions in lending programs to further objectives in specific countries.

Multilateral Development Banks

Since 1996, the Boards of all of the MDBs have approved anticorruption policies and all of the MDBs now have anticorruption or good governance policies in place. These policies are designed with both an internal focus to eliminate opportunities for corruption in institutional operations and an external focus to link lending to borrower progress in combating corruption and to help governments put in place strong governance systems. While more remains to be done to engage the institutions fully in the fight against corruption, progress has been made in recent years.

All MDBs have a fraud investigative unit or mechanism; most have established hotlines for reporting allegations and protections for whistle blowers. However, existing procedures and mechanisms could be strengthened; therefore, hotlines should be established in all MDBs. All the MDBs have added specific fraud and corruption language to their rules for the procurement of goods and services and for the selection of consultants. The strengthened rules include sanction provisions. Firms and individuals have been debarred from participating in contracts financed by that MDB, either for a specified period or indefinitely.

All the institutions have staff codes of conduct that prohibit unethical or fraudulent practices. The World Bank has become the focal point for developing innovative methods for analyzing and quantifying corruption in individual countries. The World Bank Institute, which is a research and training arm of the World Bank Group, has created "diagnostic" approaches to measure and better understand the nature and scope of corruption. Information on the Bank's anticorruption work may be found on the Bank's website:

- *www.worldbank.org/wbi/governance*, and
- *www.worldbank.org/publicsector/anticorrupt/*.

All MDBs routinely discuss governance and corruption in their country strategies. However, the treatment of these issues in country strategies varies, and the U.S. government is seeking an increase in candor and an improvement in the quality and timeliness of underlying diagnostic work.

The World Bank is placing increased emphasis on fiduciary assessments, such as Country Procurement Assessment Reports (CPARs), Country Financial Accountability Assessments (CFAAs), and Public Expenditure Reviews (PERs). Some of these assessments are jointly produced by the World Bank and one of the regional MDBs; all assessments are shared among the MDBs. The World Bank has committed to working with its borrowers to produce a comprehensive set of these core fiduciary assessments by mid-2004.

The MDB Heads of Procurement Group, which initially focussed on harmonizing procurement documents across MDBs, has produced concrete and significant results. A "master" standard bidding document for procurement of goods has been completed. This was a major breakthrough. Drafting is progressing on "master" standard documents in three additional areas: 1) prequalification for procurement of civil works and user's guide; 2) requests for proposals for consulting services; and 3) procurement of civil works and user's guide.

Progress has not been as rapid as had been anticipated due to inadequate budgets and staffing dedicated to the effort. Strong commitment by all the MDBs will be needed to keep the process on track. The Group also has facilitated discussions among its member on addressing fraud and corruption.

Over the past year, the regional MDBs have undertaken additional activities to improve governance and anticorruption. For example, the Inter-American Investment Corporation (IIC) is taking steps to establish a Corporate Governance program. This would not only serve to deter corrupt practices within IIC-financed projects but would seek to elevate standards at the level of the IIC's target market, small- and medium-sized enterprises in Latin America and the Caribbean. The Asian Development Bank (ADB) has produced Guidelines for the Financial Governance and Management of Investment Projects Financed by the ADB. The ADB completed two long-term regional training projects to strengthen the capacities of and encourage cooperation among the supreme audit institutions of the ADB's borrowing countries. The African Development Bank created a new Financial Governance Division with a view to strengthening its assessment of the financial management capacity of borrowing countries. The European Bank for Reconstruction and Development (EBRD) adopted improved fraud procedures, which enhanced the role of the EBRD Chief Compliance Office and approved new grievance procedures in March 2002.

All the MDBs have established, or are in the process of establishing, performance-based allocation mechanisms in their concessional loan windows, with a heavy emphasis on governance criteria, which provide more resources to countries that are successful in combating corruption. The United States has taken the position that these allocation mechanisms could be expanded to the full MDB lending portfolio and should be made transparent to the public.

The effort to combat money laundering has clearly taken on new significance in the wake of September 11th. In November 2001, the World Bank and the IMF Governors endorsed an action plan to strengthen these institutions' efforts to combat money laundering and terrorist finance. The action plan, which is already being implemented, calls for strengthened diagnostics, greater incorporation of these diagnostics in country strategies, and increased technical assistance to help countries strengthen their anti-money-laundering/terrorist finance regimes. For example, the World Bank has provided support for the creation of financial intelligence units and/or development of money-laundering legislation in Indonesia, Albania, Russia, Turkey, and Ukraine.

Major International Organizations

Organization of American States

The Organization of American States (OAS) continues to play an active role in the fight against bribery and corruption in the Western Hemisphere. In public statements and joint resolutions, the OAS has emphasized its concern about the negative impact of corrupt practices on good governance, economic development, and other national interests. OAS members are aware that corrupt practices thwart the process of economic and social development and pose an obstacle to the observance of human rights.

Debate in the 1994 OAS General Assembly sparked a long-term commitment to address the problems of bribery and corruption in the hemisphere. The first Summit of the Americas held in Miami in 1994 included as one of its major themes the need to address corruption. Democratically elected leaders of OAS member states issued a Summit Plan of Action that, among other things, mandated negotiation of an Inter-American Convention Against Corruption (Inter-American Convention). The convention was successfully negotiated and signed by twenty-one countries on March 29, 1996. Seven additional countries later signed the Inter-American Convention, including the United States, which signed on June 2, 1996. The Convention entered into force on March 6, 1997. The

United States has actively supported this OAS initiative. Twenty-six countries have deposited instruments of ratification or accession with the OAS as of June 2002. The United States ratified the Inter-American Convention on September 15, 2000, and deposited its instrument of ratification on September 29, 2000.

The Inter-American Convention addresses a broad range of corrupt acts, including purely domestic corruption and transnational bribery. Signatories agree to enact legislation making it a crime for individuals to offer bribes to public officials and for public officials to solicit and accept bribes. It is, therefore, considerably broader in scope than the OECD Convention, which covers only the offering, promising, or giving of bribes to foreign public officials.

Reflecting continued member interest in unethical practices, the OAS also adopted in 1997 an Inter-American Program for Cooperation in the Fight Against Corruption. The program called for several initiatives:

- Adopting a strategy to secure prompt ratification of the Convention.
- Conducting comparative studies of legal provisions in member states.
- Drafting codes of conduct for public officials.
- Implementing a system of consultations with international organizations.
- Conducting media campaigns.
- Formulating educational programs.

In June 2000, the OAS General Assembly approved Resolution AG/RES.1723 which instructed the Permanent Council "to analyze existing regional and international follow-up mechanisms with a view to recommending, by the end of 2000, the most appropriate model that States Parties could use, if they think fit, to monitor implementation of the Convention." This mandate was referred to the Working Group on Probity and Public Ethics which recommended the creation of a body of experts as the mechanism to promote the implementation of the Inter-American Convention and to "facilitate technical cooperation activities, the exchange of information, experience and best practices, and the harmonization of the anticorruption legislation of the States Parties." The Permanent Council accepted the Working Group's recommendations and transmitted them to the States Parties in Resolution CP/RES.783.

At a meeting in Buenos Aires on May 2-4, 2001, the States Parties agreed upon a mechanism that their representatives formally agreed to establish on June 4, 2001, on the margins of the OAS General Assembly meeting in San Jose, Costa Rica. The mechanism created a Committee of Experts that will be responsible for conducting the reviews and issuing a report on each State Party analyzed. The Committee will also have the responsibility for adequate civil society participation in the monitoring process. The Conference of the States Parties that have ratified the Inter-American Convention will have the overall responsibility for the successful implementation of the mechanism and is required to meet at least once a year.

The Committee of Experts has met twice in 2002 to design and launch the Follow-up Mechanism. In January, after hearing presentations on the OECD and the Council of Europe Group of States Against Corruption (GRECO) evaluation processes, the Committee adopted its rules of procedure. The Committee chose as topics for the first round the articles pertaining to mutual assistance and technical cooperation and several provisions from the article on preventive measures. In May, the experts designed the questionnaire to be completed by all States Parties by September 1. They also established the order in which the States parties will be reviewed: Argentina, Paraguay, Colombia, and Nicaragua will go first with the United States scheduled to be reviewed near the end of the first round. The Committee selected by lottery the two-member teams that will be responsible for reviewing each of the twenty-two States Parties. The U.S. will be reviewed by Jamaica and Panama, and will be responsible for participating in the review of the Bahamas and Canada.

Organization for Economic Cooperation and Development

The OECD has been a leader in the global fight against bribery and corruption. It has served as a key forum for industrial countries in developing an international consensus on combating corruption. Through its activities, the OECD addresses corruption from the perspective of both the recipients of illicit payments, for example by promoting public ethics and good governance, and the providers of illicit payments, by promoting initiatives to stop the flow of such payments at their source. The OECD membership is currently composed of thirty countries (the Slovak Republic became a member in 2000) including most of the major trading partners of the United States. OECD members share a commitment to market-oriented policies, good governance, and democratic practices. Because of these common interests, consensus for joint action has often been more practical to achieve within the OECD than within larger, more diverse international organizations.

The OECD has achieved several important breakthroughs in the fight against corrupt practices. In 1996, its members adopted a recommendation that all members should prohibit the tax deductibility of bribes to foreign public officials. Prior to that, a majority of members had refused to consider eliminating such practices because bribes to foreign public officials were widely accepted in many parts of the world. A year later, at the May 1997 Ministerial, members agreed on a recommendation to negotiate a Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, in conformity with an already agreed upon set of common elements. These elements, with a few significant exceptions, closely follow the provisions of the U.S. Foreign Corrupt Practices Act (FCPA).

On November 21, 1997, negotiators from thirty-four countries (all OECD member states and Argentina, Brazil, Bulgaria, Chile, and the Slovak Republic) adopted the Convention at the OECD in Paris. It was signed on December 17, 1997. (Australia signed the Convention a year later after having completed required consultations with its parliament.) On February15, 1999, the Convention went into effect for the twelve countries that had deposited instruments of ratification with the OECD. As of June 7, 2002, thirty-three signatories had adopted implementing legislation, and all but one had deposited an instrument of ratification with the OECD (*See* Chapter 1.) The OECD Working Group on Bribery is monitoring implementation of the Convention and following up on several important issues that were not included in the final text. In addition, the U.S. Government has established a program to monitor implementation of the Convention, of which the preparation of this annual report to Congress is an integral part. For a complete report on implementation of the OECD Bribery Convention, including progress towards denying the tax deductibility of bribes, please refer to the relevant sections of this report.

OECD support for international anticorruption initiatives has gone beyond negotiating the Convention and monitoring its implementation. A number of these initiatives have been undertaken by the OECD Anti-Corruption Division, the OECD Development Center, and the Trade Committee.

The Anti-Corruption Division serves as the focal point within the OECD Secretariat to support the work of the OECD in the fight against bribery and corruption in international business transactions. Its work is directed by the Working Group on Bribery, which is made up of experts from signatory countries, and it is responsible for implementing a program of systematic followup to monitor and promote full implementation of the Convention and related instruments. (*See* Chapter 3, Monitoring Process for the Convention.) In addition, the Division provides extensive information on the Convention and anticorruption issues in general and engages in outreach activities with non-member countries.

The Division's Anticorruption Ring Online (AnCorR Web) offers access to more than 5,000 selected references to books, journals, papers, reports, and other documents dealing with corruption and bribery, as well as a large range of downloadable electronic resources. Its resources cover a wide range of topics, including studies on the nature, cause, and impact of corruption; corporate governance and business self-regulation; public ethics, governance and management; regional initiatives; and laws and legal studies. Documents include the text of antibribery laws in OECD and non-OECD countries, as well as international treaties and conventions dealing with bribery and corruption. AnCorR Web's goal is to disseminate information on all aspects of corrupt practices and efforts to address them. This information, available to governments, businesses, and civil society, is made available to help them understand and effectively implement policies and practices in the area of anticorruption and to promote increased understanding and collaboration between these groups. AnCorR Web can be reached at *www1.oecd.org/daf/nocorruptionweb/info.htm*.

The purpose of the Division's outreach activities is to expand the range of countries that incorporate the standards of the Convention and other anticorruption instruments, to raise awareness of the problems of corruption, and to strengthen the cooperation between the various stakeholders involved in the fight against corruption. The activities rely on the development of partnerships among major anticorruption participants such as governments, the business community, NGOs and civil society, the media, and international organizations. In developing outreach programs, the Division has collaborated with many public and private sector groups, including the U.S. Agency for International Development, the Asian Development Bank (ADB), the European Union (EU), the Organization for Security and Cooperation in Europe (OSCE), and Transparency International. In addition to organizing its own workshops, conferences, and seminars, the Anti-Corruption Division participated in other international forums to disseminate information about the Convention and promote its objectives.

Initiatives included among the outreach are the Stability Pact Anticorruption Initiative for South East Europe (SPAI), the Anticorruption Network for Transition Economies, the joint ADB/OECD Forum on Combating

Corruption in the Asia-Pacific Region and the Governance Outreach Initiative for Latin America.

The Stability Pact Anticorruption Initiative (SPAI), adopted in Sarajevo in February 2000, is a regional process through which governments of the region, local and international civil society organizations, bilateral aid agencies, and international organizations combine their efforts to help curb corruption in South Eastern Europe. Along with the Council of Europe, the OECD acts as the joint Secretariat of the Initiative. Initial work focused on the preparation of general assessment of existing legislation, institutions and practices of SPAI countries. These assessments were adopted at meetings held in Tirana and Cavtat in April and September 2001. The Strategy for 2002 envisages a combination of monitoring progress achieved via the "peer pressure" technique, capacity-building, and the provision by the international donor community of technical assistance.

The Anticorruption Network for Transition Economies (AcN) is a forum for knowledge and experience sharing among donors, government officials, and non-governmental actors, encouraging regional ownership and cooperation. It focuses on strategies to reduce public sector corruption through support for the implementation of appropriate political, institutional, and economic reforms. At its annual meeting in Istanbul, held March 26-28, 2002, delegates participated in the evaluation of national anticorruption strategies, reviewed the status of ongoing Network projects, and discussed new developments in the areas of good governance, rule of law and civil participation. Participants agreed to consider a new Action Plan for Network countries that are not currently part of another effort. The Plan would involve a political commitment by governments in Armenia, Azerbaijan, Belarus, Georgia, Russian Federation, Tajikistan, Turkmenistan, and Ukraine to a menu of anticorruption measures from which they would be able to select priorities for technical assistance, monitoring, and peer review by the other countries taking part in the Plan.

In November 2001, the ADB/OECD Initiative for Asia-Pacific held its third-annual conference, hosted by the Government of Japan. At this conference, seventeen countries from the Asian and Pacific region, including Japan and Korea, signed the Anticorruption Action Plan for Asia-Pacific region. This Action Plan was developed by government experts from Asian and Pacific countries and representatives of civil society, the private sector and the international donor community. The U.S. government has formally supported efforts by the OECD and the ADB to promote an anticorruption compact for the Asia-Pacific region. Similar to the SPAI, under the Action Plan participating governments commit to take certain measures to prosecute, investigate, and prevent corruption. The U.S. government, in cooperation with OECD and ADB, is providing technical assistance to help several participating countries implement the good governance guidelines under this compact

In collaboration with the Organization of American States (OAS), the OECD developed a Governance Outreach Initiative for Latin America to support the implementation of the mutually reinforcing OAS and OECD Conventions. Three areas of action have been prioritized: (i) assistance to the Committee of Experts and the OAS Secretariat to launch the follow-up mechanism of the OAS Convention (workshop held in Washington, D.C., in January 2002); (ii) policy dialogue and transfer of expertise on the implementation of preventive measures dealing with the demand side of the corruption problem (forum held in Brazil in November 2001 and upcoming conference to be held in Mexico in September 2002); and (iii) promotion of the OECD and OAS Conventions in the business community and policy dialogue on certain issues including codes of ethics and industry standards, public procurement reform, and accounting standards (upcoming conference in Mexico in September 2002).

Other important anticorruption work has been undertaken in the OECD outside the Division. With a view to taking measures to deter bribery in officially supported export credits, the OECD Working Party on Export Credits and Credit Guarantees (ECG) agreed in November 2000 on an Action Statement on Bribery and Officially Supported Export Credits. Among other things, such action may include informing applicants requesting support about the legal consequences of bribery in international business transactions, having an applicant provide an antibribery undertaking or declaration, and refusal to approve credit, cover or other support if there is sufficient evidence that bribery was involved in the award of the export contract. In 2002, the ECG considered the results of its mapping survey on antibribery measures adopted in export credit systems which showed that a significant number of concrete new measures had been put in place since the adoption of the Action Statement. ECG members also agreed on a revised in-depth survey which better reflects the specific undertakings set forth in the Action Statement, which should contribute positively to the ongoing review of the implementation of the OECD Antibribery Convention. The Action Statement can be viewed on the OECD website at *www.oecd.org/ech/docs/bribery-en.pdf*.

The OECD Development Center has conducted policy-oriented research on corruption in developing

countries since 1996. Recognizing that in many developing countries customs efficiency is hampered by widespread corruption — which creates a major disincentive and obstacle to trade expansion among other consequences — the Development Center examined the nature of customs corruption and released a Technical Paper in April 2001 that suggests some practical paths to integrity. The Paper was based on fact-finding studies of recent experience of customs reform in Bolivia, Pakistan, and the Philippines.

Seeking to build on the experience in the OECD, and given the deep-seated relationship of bribery and corruption to the entire global trading system, the U.S. government has strongly supported work in the OECD Trade Committee on corruption as it relates to trade. An objective of such work is to identify the practices or characteristics of a trade regime that may be susceptible to bribery and corruption. To move forward on this issue, the Trade Committee has undertaken an inspection of the available data sources regarding corruption in customs processing, import licensing, pre-shipment inspection, and government procurement. Some further work on the issue is being undertaken under other parts of the trade committee's work program, i.e., trade facilitation, or may be addressed under others, i.e., government procurement or governance.

The OECD Guidelines for Multinational Enterprises (the Guidelines) offer yet another vehicle for advancing the goals of the Convention. Originally adopted in 1976, the Guidelines are non-binding recommendations to enterprises made by the thirty-three governments that adhere to them. Their aim is to help multinational enterprises (MNEs) operate in harmony with government policies and with societal expectations. In the most recent revision adopted by the OECD ministers on June 27, 2000, an entire chapter on combating bribery that tracks closely the key provisions of the Convention was inserted into the text of the Guidelines. While the Guidelines are voluntary and not legally enforceable, they draw attention to the pernicious effects of bribery and corruption and encourage companies to take a proactive approach to addressing the problems. The follow-up mechanism described in the Procedural Guidance details how the National Contact Points for the guidelines can assist parties in resolving issues pertaining to the Guidelines.

The Organization for Security and Cooperation in Europe

The Organization for Security and Cooperation in Europe (OSCE) is a regional security organization whose fifty-five participating states are in Europe, the former Soviet Union, and North America. The United States is one of the organization's founding members. Established under the authority of Chapter VIII of the United Nations Charter, the OSCE serves as a primary instrument for early warning, conflict prevention, crisis management, and post-conflict rehabilitation in the European and Eurasian region. The OSCE addresses a wide range of security-related issues, including arms control, preventive diplomacy, confidence-building and security-building measures, human rights, election monitoring, and economic and environmental security.

The OSCE has established as one of its priorities consolidating the participating states' common values and helping build fully democratic civil societies based on the rule of law. The OSCE continues to provide active support for promoting democracy, the rule of law, and respect for human rights throughout the OSCE area.

Over the past several years, the United States has sought to focus attention on the threats posed by organized crime and corruption in OSCE participating states, particularly those in economic and political transition. The 1999 Economic Summit requested the OSCE Permanent Council to review activities against corruption in other global and regional forums and determine what steps the OSCE should take in response to this problem. In addition, the OSCE Parliamentary Assembly focused on "OSCE Challenges in the 21st Century-Good Governance: Regional Cooperation, Strengthening Democratic Institutions, Promoting Transparency, Enforcing the Rule of Law and Combating Corruption" at its annual meeting in Bucharest on July 6-10, 2000. In June 2002, in Bucharest, the OSCE will conduct a follow-up seminar to the Economic Forum. The seminar will be directed at coordinating regional efforts to increase transparency and facilitate business. The U.S. Government has announced that it will provide financial support to OSCE anticorruption projects proposed by OSCE Missions. In addition, the U.S. Department of Commerce, working with the Department of State, is cooperating with OSCE Missions in implementing bilateral programs to promote business ethics in the public and private sectors.

The U.S. Commission on Security and Cooperation in Europe, the Congressional-Executive Branch body that monitors U.S. participation in the OSCE (commonly known as the "Helsinki Commission") has supported the organization's initiatives to combat corruption. The Commission, created by Congress in 1976, consists of nine members from the United States Senate, nine members from the U.S. House of Representatives, and one member each from the Departments of State, Defense, and

Commerce. At a hearing of the Commission held on March 23, 2000, Commission Chairman Representative Christopher H. Smith testified that widespread corruption in the countries of the OSCE "threatens their ability to provide strong independent legal regimes, market-based economies and social well-being for their citizens." The full text of the testimony is available at *www.csce.gov/helsinki.cfm*.

United Nations

Over the past several years, the United States has been successful in bringing together a coalition of developed and developing countries in the United Nations to fight corruption and bribery, recognizing their impact on political, economic, and social development.

As an international organization with broad membership, the United Nations can play an especially useful role in educating governments on the importance of good governance and the need for strong anticorruption programs. While UN resolutions on bribery and corruption are non-binding, they have brought increased attention to the problem of corrupt practices and have encouraged member states to take action through national legislation and adherence to international agreements, such as the OECD Antibribery Convention and the Inter-American Convention Against Corruption.

Over the past decade, the United Nations has undertaken a variety of initiatives to promote discussion of corruption and its damaging effects and to assist member states in their efforts to address the problem. Both the General Assembly and the Economic and Social Council have debated these issues at length and endorsed a number of resolutions in support of corrective action. Corruption and bribery have also been the subject of specialized meetings, such as the UN Commission on Crime Prevention and Criminal Justice.

In 1996, the General Assembly adopted an International Code of Conduct for Public Officials (Resolution 51/59) and recommended that member states use the code as a tool to guide their efforts against corruption. That same year, the General Assembly approved the U.S.-sponsored United Nations Declaration against Corruption and Bribery in International Commercial Transactions (Resolution 51/191). In the declaration, member states pledged to criminalize bribery of foreign public officials in an effective and coordinated manner. Acting in parallel with the OECD, the General Assembly also endorsed denying the tax deductibility of bribes paid by any private or public corporation or individual of a member state to any public official or elected representative of another country.

The General Assembly reiterated its interest in promoting business integrity in 1998 with the adoption of Resolution 53/176 "Action Against Corruption and Bribery in International Commercial Transactions," which called for international cooperation against corruption and bribery in international commercial transactions. The resolution urged member states to implement the Declaration Against Corruption and Bribery in International Commercial Transactions and the International Code of Conduct for Public Officials and to ratify, where appropriate, existing instruments against corruption. On December 22, 1999, the General Assembly adopted the U.S.-sponsored "Business and Development" resolution (54/204) calling upon governments to undertake anticorruption and antibribery efforts in order to create an enabling environment for business. At the same session, the General Assembly also adopted a complementary Guyana resolution "Prevention of Corrupt Practices and Illegal Transfer of Funds" (54/205) that supports strengthening national and international capacities to combat corrupt practices and bribery in international transactions.

The United States led a successful effort in 1999 to include a provision on official bribery in the Convention on Transnational Organized Crime. The provision obligates parties to the Convention to establish as criminal offenses acts of bribery involving domestic public officials. The Convention also addresses bribery of foreign public officials, but this provision is not mandatory.

In 2000, the General Assembly approved Resolution 55/59 "Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century," which was first adopted at the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, convened in Vienna, April 10-17, 2000. In addition, the General Assembly approved Resolution 55/61 entitled "An Effective International Legal Instrument Against Corruption," which had been recommended by the Crime Commission in April 2000, to negotiate under UN auspices a global instrument against corruption. The Crime Commission Secretariat analyzed existing international instruments, recommendations, and discussions relating to corruption; it also prepared a study for the Crime Commission's regular session in May 2001.

In 2001, the General Assembly again condemned corruption, bribery, money laundering and the transfer of funds of illicit origin. Resolution 56/188 entitled "Preventing and combating corrupt practices and transfer of funds of illicit origin and returning such funds to the countries of origin" invited the UN Economic and Social Council to finalize its consideration of the draft terms of

reference for the negotiation of a United Nations convention against corruption.

At the International Conference on Financing for Development (Monterrey, Mexico, March 18-22, 2002), UN States agreed that fighting corruption is a priority. They pledged to negotiate a UN comprehensive convention against corruption, including addressing the question of repatriating illicitly acquired funds and stronger cooperation to eliminate money laundering. States were also urged to become parties to the International Convention for the Suppression of the Financing of Terrorism (paragraph 65 of the Monterrey Consensus). In addition to UNGA resolutions, several UN bodies are taking actions to combat bribery and corruption.

In January 2002, the United Nations, under the auspices of the UN's Center for International Crime Prevention (CICP) of the UN Office for Drug Control and Crime Prevention (ODCCP), in Vienna, began negotiations to develop the first global convention relating to the fight against corruption. The terms of reference for the negotiation were developed by a Group of Experts from various member states who met in Vienna in August 2001. The convention will address a broad range of topics, including criminalization of corruption, measures governments can take to prevent corruption, international cooperation among parties, and measures to facilitate the recovery of illicitly acquired assets funneled abroad. Negotiators will meet at least three times per year in order to finalize the convention by the end of 2003. Following the second meeting in June 2002, negotiators will have completed the first reading of the entire draft convention text.

The United States is actively participating in the negotiations and has contributed funds so that representatives from developing countries can also participate in the negotiations.

The CICP has also developed a Global Program Against Corruption that is now being implemented in several countries. This program begins with detailed studies as to the extent of the corruption problem in each participating country, and uses CICP experts to help participating governments create detailed plans for addressing identified problems.

In 2001, CICP issued a toolkit for fighting corruption, which is available online and updated periodically. In 2002, the CICP updated its manual on practical measures against corruption; this draft revision is being circulated for comment among member states.

The UN also has a Global Program against Money Laundering within ODCCP. Its goal is to increase the effectiveness of international action against money laundering by offering comprehensive technical expertise to requesting Member States. It focuses on three main areas of activity: promoting cooperation — training, institution-building and awareness raising; understanding the money laundering phenomenon — research and analysis; and raising the effectiveness of law enforcement.

The United Nations Commission on International Trade Law (UNCITRAL) continues to provide valuable legal assistance to countries interested in improving their procurement laws and regulations, thus limiting the opportunities for bribery and corruption. In 1994, UNCITRAL approved a Model Law on Procurement of Goods, Construction, and Services, aimed at preventing bribery and corruption. Several countries have based their procurement laws or standards on provisions of the UNCITRAL Model Law. Many of the new democracies in Eastern Europe and the Newly Independent States have benefited from UNCITRAL projects. Albania and Poland, for example, have enacted legislation based on the UNCITRAL model law.

The UN Development Program (UNDP) has tackled corruption as a problem of poor governance. It recognizes that minimizing corruption is critical to reducing poverty and achieving sustainable development. UNDP's country initiatives include supporting capacity building of independent anticorruption commissions; strengthening journalism as a tool for deterring and exposing corruption; and helping to improve civic education to fight corruption.

The UN Conference on Trade and Development (UNCTAD), as part of its investment climate reviews on developing countries, has done work on the impact of bribery on foreign direct investment. In 2001, UNCTAD published a paper on the impact of bribery of foreign public officials on foreign direct investment (Publication UNCTAD/ITE/IIT/25). The paper examines the topic of transnational bribery in the context of International Investment Agreements, and how these agreements have addressed the issue of combating transnational bribery through international obligations by states to criminalize such transactions.

In February 2002, in Vienna, the United Nations convened an Interagency Anti-Corruption Coordination meeting in order to enhance the sharing of information and best practices among UN and other stakeholders in the fight against corruption. Organized by ODCCP, it included agencies that are assisting countries and organizations fight corruption — CICP, the UN Office of Internal Oversight Supervision (OIOS), the UN Development Program (UNDP), the UN Department of Economic and Social Affairs (DESA), the Council of Europe (COE), Interpol, the OECD, and Transparency International.

World Trade Organization

Bribery and corruption can affect international trade in many different ways. If left unchecked, they can negate market access gained through trade negotiations, undermine the foundations of the rules-based international trading system, and frustrate broader economic reforms and stabilization programs. U.S. firms report a variety of problems, but two key issues involve customs and government procurement. Bribes or "facilitation fees" from foreign customs officials can be an every day element of the customs importation process in many countries. Another consistent complaint is that U.S. firms' experiences in bidding for foreign government procurement contracts suggest that corruption frequently plays a significant role in determining how and to whom those contracts are awarded.

At the WTO Ministerial Conference in Doha, the Ministers agreed that new negotiations on Trade Facilitation and Transparency in Government will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations. This new work on issues related to transparency offers many potential benefits. One in particular is that corruption cannot survive in an environment of openness and accountability where individual decisions are made in accordance with a predictable set of rules.

The WTO Council for Trade in Goods (CTG) was directed under the Doha Declaration to clarify and improve relevant aspects of existing rules on transit, fees and formalities, and transparency. The CTG will also identify the Trade Facilitation needs and priorities of Members, and developing countries in particular. The aim of this work is to expand existing WTO rules and disciplines to simplify and reduce import, export and transit requirements and procedures. New rules in Trade Facilitation will improve the transparency of border measures.

The WTO Working Group on Transparency in Government Procurement (WG) has made great progress on identifying elements appropriate for inclusion in a potential multilateral agreement. The WG is now focused on building consensus on those elements and assessing technical assistance and capacity building needs related to implementing those elements in an agreement.

International Telecommunications Union

The International Telecommunications Union (ITU) facilitates cooperation among 189 member states on the improvement and rational use of international telecommunications of all kinds. The ITU also encourages participation of other organizations and private sector entities in the activities of the ITU and promotes their cooperation with Member States (i.e., governments that are party to the constituting instruments of the ITU) to advance ITU goals.

Structure of the ITU

Member States, private sector entities, and other interested organizations participate in the work of each ITU sector. The Telecommunication Standardization Sector studies technical, operating, and tariff questions and issues recommendations. Matters of particular concern to developing countries are studied by the Development Sector. The Radiocommunication Sector facilitates the rational, equitable, efficient and economical use of the radiofrequency spectrum. Recommendations issued by the sectors are not binding on members but are generally recognized by governments and private sector companies as global standards for the design of equipment and services.

The Secretary General and the Deputy Secretary General are responsible for managing the ITU Secretariat. In addition to providing staff for meetings and conferences, the Secretariat makes the necessary financial and administrative arrangements and prepares materials used for a report on the policies and strategic plan of the ITU. The three sector directors administer specialized secretariats that support the work of study groups within their respective sectors. The United States is generally satisfied with the services and support provided by the Secretariat for ITU meetings.

Decision Making in the ITU

The ITU decision-making process is essentially transparent and open to review and oversight by all Member States. ITU members consider the views of governments, private sector entities, and other organizations when undertaking activities that result in regulations, procedures, and recommendations on the operation of global telecommunication systems and services. ITU staff serve as the secretariat for ITU meetings and have responsibility for coordinating and publishing telecommunication service data needed for the operation of services. Important decisions, however, are made by the Member States themselves, not by the Secretariat.

Member States meet approximately every four years at a Plenipotentiary Conference. At this conference, members elect the Secretary General, the Deputy Secretary General, and the Directors of the three sector Bureau (the Radiocommunication Bureau, the Telecommunication Standardization Bureau, and the Development Bureau). The Plenipotentiary Conference also elects the ITU Council, which meets annually, and the Radio Regu-

lations Board. The Council is responsible for overseeing ITU activities between conferences. World Radiocommunication Conferences are held every two to three years to revise the Radio Regulations that allocate global frequencies and establish procedures for countries to assign frequencies and orbit positions. Radio Regulations are adopted in a transparent manner by a consensus of the Member States.

Tracking of Finances in the ITU

The Central Audit Office of the Swiss Confederation serves as the External Auditor of the ITU; these services are provided on a permanent basis in accordance with an agreement with the host country. The External Auditor conducts an annual audit of ITU accounts and the accounts of ITU Telecom Exhibitions. The findings are presented to the ITU Council in the form of a detailed report identifying problems uncovered in the course of the audit. In addition to inspecting and certifying the accounts, the reports of the External Auditor usually address issues related to the financial management practices and procedures of the General Secretariat.

The Joint Inspection Unit (JIU) and the Internal Auditor, who is in charge of auditing, inspecting, and investigating, also provide external oversight. In particular, upon instructions from the Secretary General, the Internal Auditor may conduct investigations of allegations or the presumption of fraud or mismanagement. The Internal Auditor reports to the Secretary General, who submits the report to the ITU Council for information. The reports of the External and Internal Auditors are available to any Member State upon request.

Policy on Conflict of Interest

The ITU's policy on conflict of interest is covered in Regulation 1.6 on "Outside Activities and Interests" in the Staff Regulations and Staff Rules. In particular, Regulation 1.6b clearly states that: "Apart from their work in the service of the Union, staff members shall not participate in any manner nor have any financial interest whatsoever in any enterprise connected with telecommunications. They may not accept any gratuities or favors from firms or private individuals concerned with telecommunications or having commercial relations with the Union." There is also Service Order 69 prohibiting supplementary payments to staff by Member States or any other entity.

[1] *See* sections on the IFIs in the First Annual Report, 1999 (pp. 52-59); the Second Annual Report, 2000 (pp.72-81); and the Third Annual Report, 2001 (pp.97-107).

[2] In accordance with the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2001, Sections 802(b) and 803(b)(1).

[3] The websites are: *imf.org*; *worldbank.org*; *iadb.org*; *ebrd.com*; *afdb.org*; and *adb.org*.

8

Private Sector Involvement in Monitoring and Implementation

The U.S. government has strived over the years to build a strong working relationship with the U.S. private sector in order to combat international bribery and corruption. U.S. officials are committed to maintaining this valuable relationship as they seek to ensure effective implementation and enforcement of the Antibribery Convention. The Bush Administration values input from the private sector and makes every effort to inform the private sector of its anticorruption policies and programs. The private sector publicizes the Convention, calls the public's attention to the problem of corruption and bribery in international business, and provides useful information on progress that signatories are making in combating corrupt practices.

In the Omnibus Trade and Competitiveness Act of 1988, Congress directed the Executive Branch to pursue an agreement in the OECD concerning the bribery of foreign public officials in international business transactions. Since that time, the U.S. government has involved the private sector in its antibribery initiatives. Collaboration between the government and the private sector was instrumental in achieving international agreement on the Convention; this cooperation has been equally important in achieving the enactment of implementing legislation by the signatories.

As the OECD Working Group on Bribery Phase II enforcement reviews have begun, the U.S. government continues to encourage the private sector and nongovernmental organizations to play an active role in monitoring and implementation of the Convention. Private sector participation in Phase II of the monitoring process is crucial; we will continue to advocate for openness and transparency in the process. Nongovernmental organizations such as the American Bar Association and Transparency International-USA provided important assistance in the organization of the OECD review of United States enforcement of the Foreign Corrupt Practices Act conducted in March 2002. The active participation of the private sector and nongovernmental organizations remains vital to the effective implementation of the Antibribery Convention.

The government and the private sector have cosponsored and participated in anticorruption conferences around the world. The government solicits the views of private sector entities regarding international anticorruption strategies in the OECD and other international forums, including the United Nations, the Council of Europe, the World Trade Organization, the Organization of American States, and the Asia-Pacific Economic Cooperation forum. In short, the U.S. government has sought to ensure that the private sector plays an active role in shaping and implementing U.S. anticorruption strategy.

Secretary of Commerce Donald L. Evans, in meetings with business and labor representatives, has promoted

efforts of the private sector to have the Convention implemented and enforced by every signatory, and he has urged the groups' support on this and other issues. On July 3, 2001, Secretary Evans wrote an op-ed to the *International Herald Tribune* on the importance of effective implementation of the Convention, adding that foreign firms could learn from the example of U.S. firms by establishing corporate compliance programs to prevent bribery. On April 17, 2002, Secretary Evans wrote an op-ed to *The Economist* emphasizing that the United States effectively enforces its obligations under the Convention and noting the importance of equally effective enforcement by other countries.

On numerous occasions, senior officials of the Commerce, State, and Justice Departments have engaged private sector representatives in discussions on the Convention and the need for strong enforcement of antibribery legislation. In November 2001, Under Secretary of Commerce for International Trade Grant Aldonas spoke to the Board of Directors of Transparency International USA on the importance of effective implementation of the Convention. In July 2001, Under Secretary Aldonas testified before the House Committee on Transportation and Infrastructure Subcommittee on Aviation on the importance to the U.S. aviation industry of effective compliance with the Convention by all of its signatories. In June 2002, Assistant Secretary for Market Access and Compliance William H. Lash III led the U.S. Government delegation to the Transatlantic Business Dialogue Mid-Year Meeting in Brussels, Belgium, and noted the importance of public/private efforts to combat transnational corruption. Under Secretary of State for Economic, Business, and Cultural Affairs, Alan Larson spoke on the importance of eliminating bribery at the International Conference on Financing for Development, held in Monterrey, Mexico, in March 2002. In addition to senior-level contacts, officials of the Commerce, Justice, State, and Treasury Departments communicate with the private sector on Convention-related issues through a variety of other channels.

U.S. officials have provided information on the Convention to the private sector by participating in numerous meetings on the Convention held by corporations, law firms, and business associations. In addition, U.S. officials attend meetings with groups that have a strong interest in combating international corruption, including Transparency International, the American Bar Association Task Force on International Standards for Corrupt Practices, the U.S. Council for International Business, and the Judicial Conference of the United States.

U.S. agencies make use of the existing advisory committee structure as a forum for dialogue with the private sector when discussions go beyond the exchange of information and into the solicitation of recommendations of advice on specific matters of policy. For example, the Department of Commerce maintains an ongoing dialogue with the private sector through its regularly scheduled meetings of Industry Sector Advisory Committees, Industry Functional Advisory Committees, and the President's Export Council. Commerce has raised the issue of international bribery before the Transatlantic Business Dialogue (TABD), a public/private partnership in which U.S. and European Union businesses meet to discuss transatlantic trade barriers and relay their findings to governments. TABD members continue to stress the importance of fighting corruption and bribery at their annual conferences. The State Department receives input on bribery issues through its Advisory Committee on International Economic Policy.

In addition, the U.S. private sector has participated in monitoring the implementation of the Convention through international business groups, such as the OECD's Business and Industry Advisory Committee (BIAC), an officially recognized advisory group composed of private sector representatives from OECD member countries. BIAC has strongly supported the Convention and has spoken out frequently on the need to fight corruption and bribery. The OECD's Trade Union Advisory Committee (TUAC) has also endorsed the Convention and its effective implementation.

The International Trade Administration's Trade Compliance Center has used its Compliance Liaison Program and other private sector initiatives to enlist the cooperation of the private sector in monitoring bribery of foreign public officials and implementation of the Convention. The business community and nongovernmental organizations can help our anticorruption efforts by reporting instances of alleged bribery and possible violations of Convention obligations directly to the Trade Compliance Center at *www.export.gov/tcc*.

U.S. officials respond to public inquiries on the Convention and the status of its implementation on a daily basis. The Convention and related commentaries, as well as the full text of the IAFCA and other background materials, have been posted on the websites of the Commerce, Justice, and State Departments (*See* Appendix). The Justice Department has posted on its website the responses of the United States to the OECD Working Group on Bribery Phase I Questionnaire on our implementing legislation; also cited on the website is the Phase II questionnaire, which describes our enforcement regime, and

the full text of the FCPA. Commerce has provided detailed information on the status of the implementation of the Convention by our trading partners. Commerce's Trade Compliance Center has included on its website an Exporters' Guide to help businesses understand key provisions of the Convention. In addition, the U.S. Office of Government Ethics has a website with information on anticorruption issues. The Department of State has issued a new 2001-03 edition of *Fighting Global Corruption: Business Risk Management*. This publication, prepared with the assistance of the Departments of Commerce and Justice, is designed to assist businesses and organizations in navigating the international anticorruption environment, and is also found on the State Department's website at *http://www.state.gov/g/inl/rls/rpt/fgcrpt/2001/*.

9

Additional Information on Enlarging the Scope of the Convention

The International Anti-Bribery and Fair Competition Act (IAFCA) directs the Department of Commerce to review additional means to enlarge the scope of the Antibribery Convention, or otherwise increase its effectiveness, while taking into account the views of private sector participants and representatives of nongovernmental organizations. Such additional means are to include, but not be limited to, improved record keeping provisions and the possible expansion of the applicability of the Convention to additional individuals and organizations. The IAFCA also asks that the report assess the impact on U.S. business of Section 30A of the Securities Exchange Act of 1934 and Sections 104 and 104A of the Foreign Corrupt Practices Act (FCPA.)

Additional Individuals and Organizations and Other Means of Enlarging the Convention

The five issues identified by the Organization for Economic Cooperation and Development (OECD) Council in December 1997 for additional examination have been the major focus of the OECD Working Group's non-core monitoring activities and are addressed in Chapter 6 of this report. As discussed therein, the U.S. government has focused on expanding coverage explicitly to include a prohibition of the bribery of foreign political parties, party officials, and candidates for public office, as in the FCPA. Most signatories do not support any changes in the scope of the Convention's coverage at this time; they prefer to monitor implementation of the Convention before making any decisions on amendments to the Convention.

After the U.S. government has more experience with monitoring implementation and enforcement of the Convention, we will be in a better position to assess its effectiveness in combating international bribery and to identify additional means for enlarging its scope and otherwise increasing its effectiveness. In making our assessment, we will continue to consult with representatives of the private sector and nongovernmental organizations to obtain their views.

Improved Record Keeping

The provisions of Article 8 of the Convention on accounting practices are not as comprehensive as those in Section V of the 1997 Revised Recommendation of the Council on Combating Bribery in International Business Transactions (Revised Recommendation). Article 8

directs signatories to take certain measures regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards in order to prohibit certain practices that might facilitate the bribing of foreign public officials or of hiding such bribery. The Revised Recommendation, however, addresses a wider range of safeguards against corruption, including accounting requirements, independent external audits, and internal company controls.

The United States would like to see signatories to the Convention implement all elements of Section V of the Revised Recommendation. OECD members had previously accepted the Revised Recommendation, and the United States will continue to encourage them to institute those practices without delay. Article X of the Revised Recommendation instructs the OECD's Committee on International Investment and Multinational Enterprises (CIME), through the OECD Working Group on Bribery, to review the Revised Recommendation within three years of its adoption. As part of the process, in June 2001 the Working Group consulted informally with representatives of the private sector, BIAC, TUAC, and civil society to examine ways to strengthen the monitoring of accounting and auditing related commitments under the Convention and Revised Recommendation. The Working Group is continuing to consider proposals for carrying out this review.

The Phase II enforcement review of Finland (*See* Chapter 3) included a review of Finland's implementation of the Revised Recommendation on combating bribery of foreign public officials in international business transactions. The examiners made several recommendations to Finland on enforcement of its tax, accounting and money-laundering legislation. The Working Group agreed that Phase II monitoring will focus more attention on tax, accounting, and money-laundering legislation than Phase I, as effective enforcement of such laws is key to detecting and prohibiting bribery

Impact on U.S. Business

The U.S. government has long been aware of the problems that the bribery of foreign public officials poses for international business and good governance. In the 1970s, widely publicized incidents of bribery by U.S. companies damaged the reputation of U.S. business. It was because of such problems that Congress enacted the FCPA to bring a halt to the bribery of foreign officials and to restore public confidence in the integrity of the American business system. Through the FCPA, the United States declared that American companies must act ethically in obtaining foreign contracts and carrying out business in foreign countries.

The FCPA's impact was widely felt. One positive effect was that the law contributed to the perception that U.S. firms operate with greater integrity in the international market. In addition, U.S. businesses were induced to compete on the strength and quality of their goods and services, which helped them to be more competitive throughout the world. Furthermore, in time, many companies recognized the importance and value of establishing awareness and corporate compliance programs specifically related to the FCPA as vehicles to prevent such bribery. But the FCPA also left U.S. firms at a disadvantage relative to their foreign competitors which were able to bribe foreign officials without fear of penalty and even benefitted from being able to deduct such bribes from their taxes. This disparity was one of the reasons the U.S. government sought to convince other countries to prohibit bribes to foreign public officials and enact criminal prohibitions against the bribery of foreign public officials.

The FCPA continues to promote the kind of honest, ethical behavior we demand of our companies at home, when they operate abroad. The U.S. government has proved its resolve to promote such conduct by prosecuting numerous bribery cases in the 25 years since the FCPA was enacted — fourteen cases in the last year. The negative consequences suffered by U.S. businesses occur not because of the FCPA, but rather when foreign competitors are either not subject to similar laws or where countries with such laws fail to properly enforce them. Today, almost all Convention signatories have enacted criminal laws against foreign bribery. Therefore, the impact on businesses will be a function of the commitment all Parties maintain with regard to the proscriptions embodied in the Convention.

The U.S. government is encouraged by information that allegations of bribery payments to foreign officials are being pursued by certain Parties. We are watching these developments closely. Nonetheless, we continue to be disturbed by reports of alleged bribery of foreign public officials by firms based in countries where the Convention is in force. Based on information available from a variety of sources, the U.S. government has received reports indicating that the bribery of foreign public officials influenced the awarding of billions of dollars in contracts around the world. While it is not possible to verify the accuracy or completeness of all these reports, we believe that they are indicative of how widespread the bribery of foreign public officials has been in recent years.

We estimate that between May 1, 2001 and April 30, 2002, the competition for 60 contracts worth $35 billion may have been affected by bribery of foreign officials. Of these 60 contracts, U.S. firms are believed to have lost nine contracts worth $6 billion. We estimate that between May 1994 and April 2002, that 474 contracts worth $237 billion may have been affected by bribery, with U.S. firms losing 110 of these contracts worth $36 billion.

Firms from OECD signatory countries continue to account for about 70 percent of these alleged bribe offers. Firms from 55 countries are alleged to have offered bribes, and officials in 113 countries are alleged to have received them in the period since May 1994. Among the alleged bribe recipients, the largest share, 30 percent, occurred in Asia. In other regions, 22 percent were in Latin America, 22 percent in Europe, 13 percent in sub-Saharan Africa, and 13 percent in the Middle East. Bribery allegations were connected to contracts in several sectors, including energy, telecommunications, construction, transportation, and military procurement.

The amount of reported bribe offers was worth up to 30 percent of a contract's value. Firms alleged to have offered bribes won nearly all the contracts in the deals for which we have information on the outcome. When companies alleged to have offered bribes lost a competition for a contract, it usually was to other firms alleged to have offered bribes. In some cases, the U.S. government understands that U.S. firms withdrew from contract competitions because foreign officials demanded bribes or do not even seek business in countries where bribery is prevalent. Rampant bribery in some countries is particularly dissuasive to small and medium-sized exporters. These exporters can least afford to expend the extensive resources often required to make bids, if they must take the chance that the outcome of their efforts will not be determined entirely by commercial considerations.

To seek to ensure that businesses compete on a level playing field, the U.S. government will continue its efforts to urge the relevant authorities in each Party to address all credible allegations of bribery of foreign public officials. When information is received relating to acts of bribery that may fall within the jurisdiction of other Parties to the Convention, the information will be forwarded, as appropriate, to national authorities for action. In addition, all Parties must take preventive action when we learn bribes are being solicited in an international tender. We will seek to engage other Parties to take coordinated action when such allegations are received from affected businesses; businesses faced with bribe requests should alert their governments so that action can be taken. As appropriate, we will approach such governments to let them know our companies cannot pay bribes, will not pay bribes, and that such tenders must be decided on the commercial merits of the proposal.

We will also continue to urge other governments to promote awareness of the Convention and national laws implementing it among their business communities and to encourage their businesses involved in international trade to develop and adopt corporate compliance programs. This was an important endeavor recognized by OECD Working Group on Bribery examiners during the U.S. government's Phase II enforcement review in March 2002: the examiners encouraged promoting compliance programs specifically tailored to a wider, international, corporate population. The positive results of such actions will benefit all participants in trade, at home and abroad.

U.S. agencies will continue to take measures to help U.S. business deal with the problem of international bribery. For information on such ongoing efforts, please refer to the 2001 report to Congress at *www.export.gov/tcc* as well as the relevant U.S. government websites listed in the Appendix to this report. We will continue to assess the impact of the Convention on U.S. business in determining our policies on implementation of the Convention and on efforts to strengthen its provisions.

10

Advantages to International Satellite Organizations

As part of the reporting obligations under Section 6 of the International Anti-Bribery and Fair Competition Act of 1998 (IAFCA), the Secretary of Commerce is required to report on the:

> "[a]dvantages, in terms of immunities, market access, or otherwise, in the countries or regions served by the [international organization providing commercial communications services], the reason for such advantages, and an assessment of progress toward fulfilling the [pro-competitive privatization policy]."

Section 5(a) defines the international organization providing commercial communications services as:

(A) the International Telecommunications Satellite Organization established pursuant to the Agreement Relating to the International Telecommunications Satellite Organization; and

(B) the International Mobile Satellite Organization established pursuant to the Convention on the International Maritime Satellite Organization.

These two international organizations, formerly known as INTELSAT and Inmarsat, no longer exist as described in the IAFCA.[1] Inmarsat completed its privatization shortly after the passage of the IAFCA. More recently, INTELSAT completed its transformation from a treaty-based organization to a privately held company known as Intelsat, Ltd.[2] As a result, neither Inmarsat nor Intelsat Ltd. has enjoyed any advantage by virtue of intergovernmental participation since the date of their respective privatization. The Federal Communications Commission (FCC) recently recognized that:

> [n]either Intelsat Ltd., Intelsat LLC nor any other subsidiary have privileges and immunities of the type currently accorded to the former intergovernmental organization. They will be organized under national laws and subject to the requirements and regulations in which they operate including tax and legal liability. Intelsat LLC will operate in the U.S. market subject to the same laws that apply to U.S. satellite service providers.[3]

Both Inmarsat and Intelsat have been succeeded by residual intergovernmental entities. These entities,

however, have no assets and are not telecommunications service providers. They exist solely to oversee fulfillment of certain modest obligations resulting from the intergovernmental agreement to privatization.

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[1]*See Addressing the Challenges of International Bribery and Fair Competition 2001: The Third Annual Report Under Section 6 of the International Anti-Bribery and Fair Competition Act of 1998* at 124, U.S. Department of Commerce, International Trade Administration, July 2001. Inmarsat Plc was required by the Inmarsat Assembly of Parties to fund a residual entity (International Maritime Satellite Organization or, IMSO) to oversee fulfillment of its global maritime distress and safety service.

[2]Press Release, Intelsat, Intelsat Launches New Era as Private Company (July 18, 2001) (available at *http://www.intelsat.com/news/release/press/2001/2001-15e.asp*). Intelsat Inc. was required by the INTELSAT Assembly of Parties to fund a residual intergovernmental entity (International Telecommunications Satellite Organization or, ITSO) to oversee Intelsat Inc's fulfillment of its lifeline connectivity obligation.

[3]*Applications of Intelsat LLC for Authority to Operate and to Further Construct, Launch and Operate C-band and Ku-band Satellites that Form a Global communications System in Geostationary Orbit*, Memorandum Opinion Order and Authorization, FCC 01-183 (rel. May 29, 2001) at ¶ 29.

Appendix: Websites Relevant to the Convention, Anticorruption, Ethics, Transparency, and Corporate Compliance Programs

United States Government

Department of Commerce

- Commerce Home Page: (*www.doc.gov*).
- Market Access and Compliance/Trade Compliance Center: Annual Reports to Congress on Implementation of the OECD Bribery Convention, Trade Complaint Hotline, Trade and Related Agreements Database (TARA), Exporter's Guides, Market Access Reports, Market Monitor, and "Market Access and Compliance-Rule of Law for Business Initiatives" (*www.export.gov/tcc*).
- Also, Country Commercial reports and guides, trade and export-related information (*www.ita.doc.gov/ita_home/itacnreg.htm*); trade counseling and other services in other countries (1-800-USA-TRADE); Office of the Chief Counsel for International Commerce, Information on Legal Aspects of International Trade and Investment, The Anti-Corruption Review, the FCPA, and other anticorruption materials (*www.ita.doc.gov/ogc/occic*).

Department of State

- Information on the OECD Bribery Convention and First Global Forum on Fighting Corruption Materials; documents related to the OECD Bribery Convention (*www.state.gov/www/issues/economic/bribery.html*).
- First Global Forum on Fighting Corruption and Safeguarding Integrity, Washington, D.C., February 1999 (*www.state.gov*) and Second Global Forum, The Hague, The Netherlands, May 28-31, 2001 (*www.gfcorruption.org*). A copy of the First Global Forum Final Conference Report and Guiding Principles for Fighting Corruption and Safeguarding Integrity among Justice and Security Officials can also be purchased from the U.S. Government Printing Office (ISBN 0-16-050150-4); Country Reports, Economic Practices and Trade Practices (*www.state.gov*).

Department of Justice, Fraud Section

- Comprehensive information on the FCPA, legislative history of FCPA, 1998 amendments, opinion procedures, and international agreements (*www.usdoj.gov/criminal/fraud.html*).

Office of Government Ethics (OGE)

- Information on ethics, latest developments in ethics, ethics programs, and informational and educational materials including OECD Public Service Management (PUMA) (*www.usoge.gov/*).

Department of the Treasury

- Information on money laundering, customs, and international financial institutions (*www.treas.gov*).

Securities and Exchange Commission (SEC)

- Information about SEC enforcement, actions, Complaint Center, and further information for accountants and auditors (*www.sec.gov*).

Agency for International Development (USAID)

- Center for Democracy and Governance, USAID's Efforts on Anticorruption, Handbook on Fighting Corruption (*www.info.usaid.gov/democracy/anticorruption*).

Inter-Governmental Organizations

Organization for Economic Cooperation and Development (OECD)

- Anticorruption-OECD AntiBribery Convention. Country compliance assessment reports (*www.oecd.org/EN/documents/0,,EN-documents-88-3-no-3-no-88,00.html*).
- ANCORRSEB, the OECD Anticorruption Ring Online, a collection of materials on effective policies and practices (*www.oecd.org/EN/home/0,,EN-home-124-nodirectorate-no-no-no-31,00.html*).

Financial Action Task Force on Money Laundering (FATF)

- (*www1.oecd.org/fatf/*).

International Criminal Police Organization (INTERPOL)

- (*www.interpol.int*).

Council of Europe (COE)

- COE Anticorruption Convention, related programs, and resources (*www.coe.int*).

Organization for Security and Cooperation in Europe (OSCE)

- Charter for European Security, Rule of Law and Fight Against Corruption (*www.osce.org*).

Stability Pact for South Eastern Europe

- Special Coordinator of the Stability Pact for South Eastern Europe, Anticorruption Initiative and Compact of the Stability Pact (*http://www.stabilitypact.org*).

Organization of American States (OAS)

- The Fight Against Corruption in the Americas; Inter-American Convention Against Corruption; resolutions of the General Assembly, studies, and supporting documents (*http://www.oas.org/juridico/english/FightCur.html)*.

Middle East and North Africa (MENA)

- The World Bank Group (*http://wbln0018.worldbank.org/mna/mena.nsf*).
- World Bank Institute, Anticorruption (*http://www.worldbank.org/wbi/governance/links.htm*).

Asia-Pacific Economic Cooperation (APEC)

- Information on the Transparency Initiative, investment, government procurement, and customs (*www.apecsec.org.sg*).

Association of Southeast Asian Nations (ASEAN)

- (*www.aseansec.org*).

United Nations—*Centre for International Crime Prevention (CICP)*

- Global Program Against Corruption (*www.UNCJIN.org/CICP/cicp.html*).

- UN Development Program (UNDP), Management Development and Governance Division (*http://magnet.undp.org/*).

World Trade Organization (WTO)

- Working Group on Transparency in Government Procurement Practices (*www.wto.org*).

The Global Corporate Governance Forum

- An OECD and World Bank Initiative to help countries improve corporate governance standards and corporate ethics (*www.worldbank.org/html/extdr/extme/2217.htm*).
- OECD Principles of Corporate Governance (*www1.oecd.org/daf/governance/principles.htm*).

World Customs Organization (WCO)

- (*www.wcoomd.org*). Please note that the WCO web site has been redesigned. This new version of the site only supports Internet Explorer 5.0 or Netscape 6.0 or later versions of these browsers.

International Financial Institutions

The World Bank

- Public Sector Group, World Bank Anticorruption Strategy, information on preventing corruption in WB projects, helping countries reduce corruption, and supporting international efforts (*www1.worldbank.org/publicsector/anticorrupt/*).
- Economic Development Institute (EDI), World Bank Anticorruption Diagnostic Surveys (*www.worldbank.org/wbi/governance*).

International Monetary Fund (IMF)

- Codes of Good Practices in Monetary and Financial Policies (*www.imf.org/external/np/mae/mft/index.htm*).

Inter-American Development Bank (IDB)

- (*www.iadb.org*).

Asian Development Bank (ADB)

- (*www.adb.org*).

African Development Bank (AfDB)

- (*www.afbd.org*).

European Bank for Reconstruction and Development (EBRD)

- (*www.ebrd.com/new/index.htm*).

Other Organizations

U.S. Chamber of Commerce (USCOC)

- Center for International Private Enterprise (CIPE), an affiliate of the USCOC, information on corporate governance and anticorruption (*www.cipe.org*).

International Chamber of Commerce (ICC)

- Rules of Conduct and Bribery, ICC Commercial Crime Services, and due diligence (*www.iccwbo.org*).

Transparency International (TI)

- TI Corruption Index and Bribe Propensity Index; TI Source Book on anticorruption strategies and other international initiatives by governments, NGOs, and the private sector (*www.transparency.org*).
- 10th International Anti-Corruption Conference, Prague 2001 (*www.10iacc.org*).
- 11th International Anti-Corruption Conference, Seoul 2003 (*www.11iacc.org*).

U.S. International Council for Business

- (*www.uscib.org*).

The Conference Board

- Information on corporate ethics (*www.conference-board.org*).

American Bar Association (ABA)

- Taskforce on International Standards on Corrupt Practices (*www.abanet.org/intlaw/divisions/public/corrupt.html*).
- ABA-Central and East European Law Initiative (CEELI) (*www.abanet.org/ceeli/*).

Ethics Resource Center

- (*www.ethics.org*).

COSO

- The Committee of Sponsoring Organizations of the Treadway Commission (*www.coso.org*). The COSO ("Treadway Commission") is a volunteer private sector organization consisting of the five major financial professional associations dedicated to improving the quality of financial reporting through business ethics, effective internal controls, and corporate governance. The five associations are:

  The American Accounting Association (AAA) (*http://accounting.rutgers.edu/raw/aaa*);

  The American Institute of Certified Public Accountants (AICPA) (*www.aicpa.org/index.htm*);

  The Financial Executives Institute (FEI) (*www.fei.org*);

  The Institute of Internal Auditors (IIA) (*www.theiia.org*); and

  The Institute of Management Accountants (IMA) (*www.imanet.org*).

The Association of Government Accountants (AGA)

- (*www.agacgfm.org*).
- Sites Directory for U.S. and International Accounting Associations and State CPA Societies (*http://taxsites.com/associations2.html*).

International Organization of Supreme Audit Organizations (INTOSAI)

- (*www.intosai.org*).

Global Coalition for Africa (GCA)

- Principles to Combat Corruption in Africa Countries; Collaborative Frameworks to Address Corruption (*www.gca-cma.org/ecorrtion.htm*).

South Asian Association for Regional Cooperation

(*www.saarc.org*).

Pacific Basin Economic Council (PBEC)

- An association of senior business leaders, which represents more than 1,200 businesses in 20 economies in the Pacific Basin region (*www.pbec.org*).

Americas' Accountability/ Anti-Corruption (AAA) Project

(*http://www.respondanet.com/english/index.htm*).

Anti-Corruption Network for Transition Economies

(*www.nobribes.org*).

Inter-Parliamentary Union

(*www.ipu.org*).

World Forum on Democracy

(*www.fordemocracy.net*).

National Democratic Institute for International Affairs (NDI)

(*www.ndi.org*).

The International Republican Institute (IRI)

(*www.iri.org*).

International Center for Journalists

(*www.icfj.org*).

World Association of Newspapers

(*www.fiej.org*).

The Carter Center

(*www.cartercenter.org*).

The Asia Foundation

(*www.asiafoundation.com*).

The National Endowment for Democracy (NED)

(*www.ned.org*).

Websites with Country-Specific Convention-Related Legislation

- Implementing legislation of many Parties can be down-loaded directly from the OECD website (*www.oecd.org/oecd/pages/home/displaygeneral/0,3380,EN-document-86-nodirectorate-no-6-7252-31,00.html*).
- The OECD also provides non-html references to some countries corruption-related legislation at: *http://www1.oecd.org/daf/nocorruptionweb/law/index.htm*.
- Several countries also have posted legislation on their government websites. Legislation and/or other related information of the following countries is available from one or more of these sources.

Argentina

- Ministry of Justice: *www.jus.gov.ar*.

Australia

- The government response (tabled in the Senate on March 11, 1999) to the Treaties Committee Report on the OECD Convention and the Draft Implementing Legislation may be found at *http://www.aph.gov.au/hansard/hanssen.htm* (select March 11, 1999 and go to p.2634).
- The Criminal Code Amendment (Bribery of Foreign Public Officials) Bill 1999 is at *http://www.aph.gov.au/parlinfo/billsnet/main.htm* (open "old bills"). The Bill's Explanatory Memorandum is also on that site.

Austria

- The German text of the Austrian implementing legislation (Strafrechtsanderungsgesetz 1998 BGBI No. I 153) is available in pdf format on the OECD website, and at the Austrian government website, *http://www.ris.bka.gv.at.*

Belgium

- Belgian Ministry of Justice: *www.just.fgov.be*.
- The text of the law passed on February 10, 1999, is available in French at *http:///194.7.188.126/justice/index_fr.htm*, (to find the text, choose the Moniteur published on 23.03.1999). It is also available in French in pdf format on the OECD website (*http://www.oecd.org/pdf/M00007000/M00007659.pdf*).

Brazil

- The English text of two relevant legal documents is available in pdf format on the OECD website:

  Law no. 9.613, passed on March 3, 1998, — *http://www.oecd.org/pdf/M00007000/M00007660.pdf;*

  Decree 1171 of June 1994 — *http://www.oecd.org/pdf/M00007000/M00007662.pdf*

Bulgaria

Council of Ministers: *www.government.bg*.

Canada

- Access to the legislation can be obtained through the website for the Department of Justice/Ministère de la Justice (*http://laws.justice.gc.ca/en/index.html*).
- Alternatively, the Act concerning the Corruption of Foreign Public Officials is located at *http://www.parl.gc.ca/36/1/parlbus/chambus/house/bills/government/S-21/S-21_3/90062be.html*.
- The English text is also available in pdf format on the OECD website (*http://www.oecd.org/pdf/M00007000/M00007666.pdf*).

Czech Republic

- Ministry of Justice: *www.mvcr.cz/english.html*.

Denmark

- Implementing legislation can be found on the Department of Justice web site (in Danish only) at: *http://www.folketinget.dk/Samling/19981/lovforslag_oversigtsformat/L232.htm*.

Finland

- Implementing legislation can be found on the government website (in Finnish and Swedish) at *http://www.valtioneuvosto.fi/vn/liston/base.lsp?k=en*.
- Excerpts showing amendments to the Finnish Penal Code are also available in pdf format on the OECD website (*http://www.oecd.org/pdf/M00007000/M00007668.pdf*).

France

- The draft law modifying the penal code and the penal procedure code relating to combating bribery and corruption can be found on the website of Legifrance (in

French only) at *http://www.legifrance.gouv.fr/citoyen/index.ow*.

- The French text of the legislation is also available in pdf format on the OECD website (*http://www.oecd.org/pdf/M00007000/M00007670.pdf*).

Germany

The following are available in pdf format on the OECD website:

- The English (unofficial translation *http://www.oecd.org/pdf/M00007000/M00007675.pdf*) and German texts (*http://www.oecd.org/pdf/M00007000/M00007674.pdf*) of the implementing legislation dated September 10, 1998.
- The relevant criminal code (in German – *http://www.oecd.org/pdf/M00007000/M00007677.pdf*, and in unofficial English translation – *http://www.oecd.org/pdf/M00007000/M00007680.pdf*).
- The Administrative Offence Act (in German – *http://www.oecd.org/pdf/M00007000/M00007681.pdf*, and in unofficial English translation – *http://www.oecd.org/pdf/M00007000/M00007682.pdf*).

Greece

- The following are both available in pdf format on the OECD website:

  The unofficial French translated text of the implementing legislation dated November 11, 1998, (*http://www.oecd.org/pdf/M00007000/M00007683.pdf*);

  The English text of Greek law No. 2331 on money laundering of August 1995 (*http://www.oecd.org/pdf/M00007000/M00007684.pdf*).

Hungary

- The English text of the relevant implementing legislation is available in pdf format the the OECD website (*http://www.oecd.org/pdf/M00007000/M00007685.pdf*).

Iceland

- The following are both available in pdf format on the OECD website:

  The English text of the Icelandic Prevention of Corruption (Amendment) Act (2001, no. 27 of 2001) (*http://www.oecd.org/pdf/M00024000/M00024024.pdf*) ;

  The relevant discussions (*http://www.irlgov.ie/bills28/bills/2000/0100/default.htm*).

Ireland

- Legislation pending in the Irish parliament can be viewed or tracked at: *www.Irlgov.ie/oireachtas*.

Italy

- Law number 231 which implements the Convention can be found at *www.parlamento.it/parlam/leggi/deleghe/01231dl.htm*.
- Legislation to ratify the Convention (Law of 29 September n. 300, published in Ordinary Supplement 176-L to the Official Journal of 25 October 2000 n. 250) is available in English in pdf format (*http://www.oecd.org/pdf/M00007000/M00007688.pdf*).
- Other relevant legislation can be downloaded on An CorR web (*http://www.oecd.org/daf/nocorruptionweb*).

Japan

- An unofficial English translation of the Japanese implementing legislation (the amended Unfair Competition Act, adopted on September 18, 1998, is available in pdf format (*http://www.oecd.org/pdf/M00007000/M00007689.pdf*) on the OECD website.

Korea

- An English translation of the Korean implementing legislation (The Act on Preventing Bribery of Foreign Public Officials in International Business Transactions) is available in pdf format on the OECD website: *http://www.oecd.org/pdf/M00007000/M00007690.pdf*.

Luxembourg

- The implementing legislation of 15 January 2001 is available in pdf format (*http://www.oecd.org/pdf/M00007000/M00007692.pdf*).

  (Official title: Loi du 15 janvier 2001 portant approbation de la Convention de l 'OCDE du 21 novembre 1997 sur la lutte contre la corruption d'agents publics étrangers dans les transactions commerciales internationales et relatif aux détournements, aux destructions d'actes et de titres, à la concussion, à la prise illégale d'intérêts, à la corruption et portant modification d'autres dispositions légales).

Mexico

- The Mexican Penal Code is available on the Government's website in Spanish (*http://www.cddhcu.gob.mx/leyinfo/9*).

- The Mexican Criminal Code is available in English in pdf format (*http://www.oecd.org/pdf/M00024000/M00024324.pdf*).
- Secretariat of Public Evaluation (SECODAM) website with general corruption development information: *www.secodam.gob.mx*.

Netherlands

- The law ratifying the OECD Bribery Convention (*http://www.oecd.org/pdf/M00024000/M00024322.pdf*).
- The law implementing the OECD Bribery Convention are available in Dutch in pdf format (*http://www.oecd.org/pdf/M00024000/M00024323.pdf*).

New Zealand

- The following are both available in pdf format:

  The relevant implementing legislation (*http://www.oecd.org/pdf/M00007000/M00007753.pdf*);

  The Crimes (Bribery of Foreign Public Officials) Amendment Act 2001 (*http://www.oecd.org/pdf/M00007000/M00007756.pdf*).

Norway

- The implementing legislation (Amendments to the Norwegian Penal Code of May 22, 1902, chapter 2, para. 128) is available in pdf format on the following websites:

  The OECD website (*http://www.oecd.org/pdf/M00007000/M00007759.pdf*);

  The Norwegian government website (*www.lovdata.no/all/*).

Portugal

- Law no. 13/2001 transposing to national law the OECD Bribery Convention is available in English – *http://www.oecd.org/pdf/M00024000/M00024105.pdf* (pdf format).
- Furthermore, the law 108/2001 of 28 november 2001, amending the rules governing the offense of trading in influence and corruption, is available in the following translations:

  Portuguese (*http://www.oecd.org/pdf/M00024000/M00024111.pdf*); and

  French (*http://www.oecd.org/pdf/M00024000/M00024112.pdf*).

Slovak Republic

- The main provisions implementing the OECD Bribery Convention can be found in the Criminal Code of the Slovak Republic of which the relevant extracts are available in pdf format (*http://www.oecd.org/pdf/M00024000/M00024008.pdf*).
- Other relevant provisions are available on AnCorR web (*http://www1.oecd.org/daf/nocorruptionweb/Law/oecd.htm#SlovakRepublic*).

Slovenia

- The following are available in Slovenian:

  The Slovenian Penal Code of 1994 (*http://www2.gov.si/zak/Zak_vel.nsf/067cd1764ec38042c12565da002f2781/a1675736157f9c0ec1256628002fda68?OpenDocument*);

  The law amending the Penal Code (including on corruption issues) of 1999 (*http://www2.gov.si/zak/Zak_vel.nsf/067cd1764ec38042c12565da002f2781/c12563a400338836c125673e002de2df?OpenDocument*).
- The translation into english of the relevant excerpts of these laws are available in pdf (*http://www.oecd.org/pdf/M00024000/M00024167.pdf*).
- Furthermore, excerpts of the Criminal Procedure Act of Slovenia (as of December 2000) are available in English (*http://www.oecd.org/pdf/M00024000/M00024171.pdf*).
- The Slovenian version of this law can be found on the legal resource centre of the Slovenian Government (*Kratika ZKP and ZKP A–D), (http://www.sigov.si/dz/en/aktualno/spremljanje_zakonodaje/sprejeti_zakoni/sprejeti_zakoni.html*).
- The Liability of Legal Persons for Criminal Offences Act of 1999 is available in Slovenian (*http://www2.gov.si/zak/Zak_vel.nsf/067cd1764ec38042c12565da002f2781/c12563a400338836c12567a8003552bd?OpenDocument*).

Spain

- Implementing legislation accessible via the following websites:

  Spanish presidency with links to ministries: *www.la-moncloa.es*;

  Ministry of Justice: *www.mju.es*;

Ministry of Economy: *www.mineco.es*;

Official state bulletins: *www.boe.es*.

- The provisions to the Spanish Penal Code, implementing the Convention, is available in pdf format on the OECD website (*http://www.oecd.org/pdf/M00007000/M00007760.pdf*).

Sweden

- The Swedish implementing legislation is available in pdf format on the OECD website (*http://www.oecd.org/pdf/M00007000/M00007762.pdf*).

Switzerland

- Swiss laws can be found on Recueil Systématique du Droit Fédéral (available in French, German and Italian only) at (*http://www.admin.ch/ch/f/rs/rs.html*). Search for the Swiss Penal Code of December 21, 1937, which will soon be amended to comply with the Convention.
- The following legislation is available in French on the OECD website:

  Modification of the Swiss Penal Code and the Amendments to the Swiss Penal Code (*http://www.oecd.org/pdf/M00007000/M00007765.pdf*); and

  The Law of April 19, 1999, authorizing the ratification of the Convention (*http://www.oecd.org/pdf/M00007000/M00007767.pdf*).
- The Recueil Systématique du Droit Fédéral is available in pdf-format in:

  French (*http://www.admin.ch/ch/f/rs/rs.html*);

  German (*http://www.admin.ch/ch/d/sr/sr.html*); and

  Italian (*http://www.admin.ch/ch/i/rs/rs.html*).

United Kingdom

- The following are available on the government's website:

  The UK Anti-Terrorism, Crime and Security Act 2001 (2001 Chapter 24) – Part 12: Bribery and Corruption (*http://www.uk-legislation.hmso.gov.uk/acts/acts2001/20010024.htm*); and

  The corresponding explanatory notes (*http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmbills/049/2002049.htm*).
- The government's statement on the consolidation and amendment of the Prevention of Corruption Acts 1889-1996 and the UK whitepaper on government proposals for the reform of criminal law of corruption in England and Wales are available on the webpage of the UK home office on public life (*http://www.homeoffice.gov.uk/new_indexs/public.htm*).